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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN UKRAINE

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This report is submitted by Ukraine to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.

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

1. In the accounting year on 01.07.2014 the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On State Aid to Undertakings” developed by the Antimonopoly Committee of Ukraine together with experts of the EU technical assistance project, in the second reading and as a whole.

2. This Law takes into consideration obligations of Ukraine according to the provisions of the Association Agreement.

3. The main purpose of the Law is setting legal fundamentals for operation of the transparent state aid system which shall provide for minimisation of negative influence of state aid on competition; establish equal terms for operation of economic entities in the goods markets of Ukraine.

4. Application of the provisions of the Law shall allow eliminating the selective character of state aid granted to individual economic entities which negatively influences or may influence competition; shall encourage justified character of support of entrepreneurial activity, provide for achievement of maximum economic results, engagement of foreign investment according to the best international practice.

5. Introduction of the Law shall provide for preventing adoption of legislative instruments in the sphere of state aid whose application may have negative consequences for competition as well as eliminating such consequences if state aid which substantially deforms competition is detected.

6. In addition, in order to provide for application of the Law of Ukraine “On State Aid to Undertakings”, the Committee has developed and monitors consideration of the draft Law of Ukraine “On Amending Article 35 of the Budget Code of Ukraine” by Verhovna Rada of Ukraine. The draft law was adopted by the Verkhovna Rada of Ukraine on 08.10.2013 in the first reading as a basis.

7. The Committee adopted the draft Decree of the Antimonopoly Committee of Ukraine “On Approving Changes to Certain Legislative Instruments” at the meeting of the Committee on December 09, 2014 No. 612-p (hereinafter referred to as Decree No. 612-p).

8. Decree No. 612-p was adopted for the purpose of bringing the Regulations on the Procedure for Filing Applications to the Bodies of the Antimonopoly Committee of Ukraine with Regard to Granting Authorisations for Concerted Actions of Economic Entities (the Regulations on Concerted Actions) approved by the order of the Antimonopoly Committee of Ukraine dated February 12, 2002 No. 26-p, registered with the Ministry of Justice of Ukraine on August 09, 2002 under No. 644/6932, and the Regulations on the Procedure for Filing Applications to the Bodies of the Antimonopoly Committee of Ukraine with Regard to Granting Authorisations for Concentrations of Economic Entities (the Regulations on Concentration) approved by the order of the Antimonopoly Committee of Ukraine dated February 19, 2002 No. 33-p, registered with the Ministry of Justice of Ukraine on March 21, 2002 under No. 284/6572, into compliance with the applicable legislation, in particular, the Laws of Ukraine “On Information”, “On Access to Public Information” and “On Protection of Personal Data”.

9. The Antimonopoly Committee of Ukraine adopted the draft Decree “On Approving Amendments to the Regulations on Concerted Actions” at the meeting of the Committee on September 23, 2014 No. 472-p.

10. The Decree was developed for the purpose of bringing the Regulations on the Procedure for Filing Applications to the Bodies of the Antimonopoly Committee of Ukraine with Regard to Granting Authorisations for Concerted Actions of Economic Entities (the Regulations on Concerted Actions) approved by the order of the Antimonopoly Committee of Ukraine dated February 12, 2002 No. 26-p, registered with the Ministry of Justice of Ukraine on March 07, 2002 under No. 238/6526, into compliance

with the Law of Ukraine “On Amending Certain Legislative Acts of Ukraine Relating to Preventing Negative Impact on Stability of the Banking System”. This Law introduced amendments to the Law of Ukraine “On the Deposit Insurance System” which governed individual issues associated with receiving permission for concerted actions with regard to selling an insolvent or transitional bank to the Ministry of Finance of Ukraine or the state bank.

11. The Verkhovna Rada of Ukraine of the VII convocation performed support for draft laws filed by the Cabinet of Ministers of Ukraine and People’s Deputies with regard to issues falling within the competence of the Committee, i.e.:

12. The draft Law of Ukraine “On Amending the Law of Ukraine “On Protection of Economic Competition” (v. No. 3436 dated 04.12.2008, in the Verkhovna Rada of the VII convocation v. No. 0875 dated 12.12.2012).

13. The draft namely provided for the growth of the individual indicators of total sales (asset value) of participants of concentration excess of which would result in the obligation to obtain a preliminary authorisation, improvement of legal mechanisms of actions against unlawful use of a market position by an economic entity, namely, with regard to cases when a vendor was economically dependent upon a buyer.

14. The draft law was adopted by the Verkhovna Rada of Ukraine of the VI convocation on 14.04.2009 in the first reading.

15. At the meeting of the Committee on issues of entrepreneurship, regulatory and antimonopoly policy of the Verkhovna Rada of the VII convocation the draft law was considered on 19.06.2013 and recommended to be adopted in the second reading.

16. The draft law was not considered in the second reading, therefore on 27.11.2014 it was returned to the Cabinet of Ministers of Ukraine as the withdrawn one due to termination of authorities of the Verkhovna Rada of the VII convocation.

17. The draft Law of Ukraine “On Amending Certain Laws of Ukraine (Regarding Improvement of Legislation on Protection of Economic Competition)” submitted by the People's Deputy of Ukraine. I. A. Bielousova (v. No. 1184 dated 13.03.2012) (in the Verkhovna Rada of the VII convocation v. No. 0880 dated 12.12.2012).

18. The draft law is aimed at improvement of the mechanism and creation of favourable conditions for provision of economic entities operating in regional goods markets with findings in the form of recommendative clarifications with regard to the compliance of their actions with the provisions of Articles 6, 10 and 13 of the Law of Ukraine “On Protection of Economic Competition” and Article 15¹ of the Law of Ukraine “On Protection against Unfair Competition”.

19. The draft law was not considered in the second reading by the Verkhovna Rada of the VII convocation.

20. According to the assignment of the Cabinet Ministers of Ukraine, draft laws which are registered in the Verkhovna Rada of Ukraine and submitted by the People’s Deputies of Ukraine are regularly examined. The Cabinet of Ministers of Ukraine is provided with opinions and propositions on grounds of conducted examinations. The scope of such examinations includes provisions of draft laws on issues within the competence of the Antimonopoly Committee of Ukraine. With the purpose of implementation of the said assignment, the Committee processed over 100 draft laws the provisions of which produced or might have produced an impact upon the state of competition, and forwarded commentaries and suggestions aimed at improvement of the provisions of 25 draft laws to the Cabinet of Ministers of Ukraine.

21. Based on Article 20¹ of the Law of Ukraine “On the Antimonopoly Committee of Ukraine” the Committee filed propositions with regard to 62 draft laws submitted both by the Cabinet of Ministers of Ukraine and People’s Deputies of Ukraine to the relevant committees of the Verkhovna Rada of Ukraine.

22. The representatives of the Committee took part in the meetings of committees of the Verkhovna Rada for support for the Committee’s propositions.

23. Furthermore, the drafts of legislative instruments filed by central executive authorities for the consideration of the Cabinet of Ministers of Ukraine were continuously processed. In 2014, the Antimonopoly Committee of Ukraine processed 1,832 of such drafts.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

Anticompetitive Concerted Actions of Economic Entities

24. The number of infringements in the form of anticompetitive concerted actions of economic entities ceased by the bodies of the Antimonopoly Committee of Ukraine in 2014 constituted 445 items. 354 infringements out of them were ceased within consideration of cases, 91 more actions having the attributes of anticompetitive concerted actions were ceased as a result of followed recommendations.

25. In 2014 the bodies of the Committee imposed fines for the infringements of laws on protection of economic competition in the form of anticompetitive concerted actions of economic entities in the amount of 25.5 million hryvnias, including 5.5 million hryvnias imposed by the Committee as the collective body.

26. The biggest number of infringements by way of anticompetitive concerted actions of economic entities was detected in the agribusiness markets – 16.51 percent, fuel and energy industry – 10.78 percent, transport markets – 10.09 percent, and healthcare, medicinal and healthcare products – 4.59 percent.

27. Out of actions detected by the Committee, the biggest share of anticompetitive concerted actions was made up of infringements in the form of bid rigging at tenders and auctions: 359 cases (81 percent).

28. Only the investigation into such infringements in the central administration of the Committee found facts of increasing the cost of the goods supplied in the amount of almost 94 million hryvnias. Certain decrease in the number of detected infringements of this kind is firstly associated with general reduction in the volumes of procurement at the state expenses in 2014 in comparison with the previous year, and, secondly, with ban on inspecting economic entities in August - December 2014, which is a principal means of detecting anticompetitive concerted actions, in particular, in the course of tenders (auctions).

Examples:

1. The Committee acknowledged that MK Engineering Limited Liability Company and Data Intehra Limited Liability Company violated laws on protection of economic competition in the form of anticompetitive concerted actions for bid rigging when participating in the open bidding for procurement of mounting, technical maintenance and broadcasting and rebroadcasting equipment repairs services conducted by Ukrtransgaz, Subsidiary Company of Naftogaz of Ukraine National Joint Stock Company in 2011.

In the course of investigation into the case it was established that Ukrtransgaz SC and MK Engineering LLC concluded an agreement for purchase of the goods for the amount of 98.9 million hryvnias. However, MK Engineering LLC concerted with Data Intehra LLC and increased the cost of the goods and, therefore, the price offer for the bidding almost twice higher than the actual cost of the goods, resulting in overspending of the funds for the amount of approximately 50 million hryvnias.

The Committee imposed a fine upon MK Engineering LLC in the amount of 1 million hryvnias, and upon Data Intehra LLC in the amount of 200 thousand hryvnias for the committed infringement.

2. The Committee found actions of ZDRAVIIE Limited Liability Company and Medreabilitatsiia Limited Liability Company in the course of participation in procurement procedures to be infringements in the form of anticompetitive concerted actions for bid rigging, and imposed a fine in the total amount of 4 million hryvnias.

When the case was investigated, it was found that Medreabilitatsiia LLC and Zdraviie LLC were incorporated at the same time, had no production capacities or qualified personnel to render services which were subject of procurement, divided their victory in the given procurement procedures, acted as an intermediary between special state health resort institutions (which usually participate in respective procurement procedures themselves) and the Social Insurance Fund for Temporary Disability which purchased recreational vacation packages for the insured and their family members, resulting in overspending of the funds of the insured due to transferring substantial amounts received from the Fund to accounts of other economic entities (which do not provide services which are the procurement subject) for so called “consulting services” specifying the purpose of payment as “payment for health resort treatment services”.

3. The Luhansk Regional Office of the Committee found actions of INBIKO Limited Liability Company and Skhidnoukrainska Budivelna Kompaniia Limited Liability Company by way of concerting their behaviour while preparing for and participating in the open bidding for procurement of natural construction sand conducted by Donetska Zaliznytsia SE in December 2010 and March 2012 to be infringements of laws on protection of economic competition in the form of anticompetitive concerted actions for bid rigging.

The violators were fined for the total amount of 209.78 thousand hryvnias for infringement of the laws on protection of economic competition.

4. Sumy Regional Office of the Committee found actions of SIKH Limited Liability Company and BFA-Ukraine Scientific and Production Company in the form of Limited Liability Company by way of concerting behaviour in the course of the open bidding for procurement of medical, surgery and orthopaedic equipment conducted by Sumska Miska Klinichna Likarnia (Sumy Municipal Clinical Hospital) No. 1 Public Enterprise in July 2012.

The violators were fined for the total amount of 204 thousand hryvnias for infringement of laws on protection of economic competition.

5. The Antimonopoly Committee of Ukraine considered the case with regard to Viktoriia LLC and Yuliia LLC infringing laws on protection of economic competition in the form of anticompetitive concerted actions associated with bid rigging.

The conducted investigation found that Viktoriia LLC and Yuliia LLC concerted their behaviour while participating in procurement procedures in calculation of the cost of constructions, buildings, premises repairs services, namely, for the Ukrainian Children’s Centre “Moloda

Hvardiia” State Enterprise of Odesa Regional Institute of Public Administration of the National Academy for Public Administration under the President of Ukraine, content of weapons of the Main Department of the Ministry of Internal Affairs of Ukraine for the Region of Odesa, which could have resulted in increasing the cost of the procurement subject.

In particular, documents submitted by these enterprises contained the same mistakes, the same differences from the forms provided in the bidding documentation, common execution form.

The Antimonopoly Committee of Ukraine imposed the fine for the infringements of laws on protection of economic competition in the total amount of 140 thousand hryvnias upon Viktoriia LLC and Yuliia LLC.

29. In addition to infringements in the form of anticompetitive concerted actions of economic entities associated with bid rigging, 2 infringements in the form of anticompetitive concerted actions associated with distribution of markets of supply sources according to the principles of territory, range of goods, scope of their sale or purchase, the circle of sellers, buyers or consumers or other signs, and 12 infringements in the form of setting prices or other conditions of purchase or sale were ceased. 59 infringements were ceased in terms of economic entities taking similar actions (inaction) in the goods market which led or could lead to prevention, elimination or restriction of competition if analysis of the goods market situation disposes of objective reasons for such actions (inaction).

30. During 2014 the Committee provided 3 findings regarding classification of actions under Article 6 of the Law of Ukraine “On Protection of Economic Competition”.

31. Such findings are provided to economic entities which applied for the consultation with regard to the compliance of their actions with the requirements of the aforementioned provisions for the purpose of prevention of infringements of laws on protection of economic competition and elimination of risks of economic entities to be held accountable in case of their conducting a certain type of behaviour.

Abuse of a Monopoly (Dominant) Position

32. The vastest category of infringements of laws on protection of economic competition detected and ceased by the Antimonopoly Committee of Ukraine in the accounting year remained the abuse of a monopoly (dominant) position: 2,221 cases. Consideration of cases resulted in cessation of 793 infringements of this type, and 1,428 cases of actions (inaction) with their attributes were ceased according to the Committee’s recommendations.

33. During 2014 the bodies of the Antimonopoly Committee of Ukraine imposed fines in the total amount of 60.88 million hryvnias upon economic entities abusing a monopoly (dominant) position.

34. The vastest types in the structure of the infringements in the form of abuse of a monopoly (dominant) position ceased by the bodies of the Committee were pricing abuse as well as actions or inaction of monopoly formations that resulted or might have resulted in prevention, elimination or restriction of competition, or restriction of the interests of other economic entities or consumers, and would have been impossible under the conditions of existence of significant competition in the market.

35. The biggest number of infringements in the form of abuse of a monopoly (dominant) position was found in the housing and municipal sector: **36.05 percent**.

Examples:

- i) According to the decision of the Administrative Board of the Vinnytsia Regional Office of the Committee, actions of ZHEK No. 5 City Public Utility Enterprise were found to be infringement of laws on protection of economic competition in the form of abuse of a monopoly position in the market of services of maintaining houses and constructions and adjacent territories by way of including into the tariffs expenses for maintaining the sports and youth club “Leader” and additional services of issuing certificates which are inseparably connected with services of maintaining buildings and construction and adjacent territories, with actions which resulted in restriction of consumer interests, which would have been otherwise impossible under the conditions of existence of significant competition in the market.
- ii) The similar infringement in the market of services of maintaining buildings and constructions and adjacent territories was ceased by the Administrative Board of the Kyiv City Office of the Committee.

The conducted examination that Zhytlovo-Eskpluatatsiina Orhanizatsiia – 103 Holosiivskoho Raiony Public Utility Enterprise charged unreasonable payment for services of maintaining building and constructions and adjacent territories, thus committing an infringement in the form of abuse of a monopoly (dominant) position by means of setting sales prices for the goods which would have otherwise been impossible under the conditions of existence of significant competition in the market.

Zhytlovo-Eskpluatatsiina Orhanizatsiia – 103 Holosiivskoho Raiony Public Utility Enterprise imposed the fine in the amount of 68 thousand hryvnias upon for the committed infringement.

- iii) The Administrative Board of the Mykolaiv Regional Office found actions of Pivden Residential and Public Utility Enterprise of the Mykolaiv City Council as the asset holder of blocks of apartments, constructions of the residential complex and complex of buildings and constructions which had been transferred to it, and the provider of services of central cold water supply and sewerage by means of internal systems within the buildings it held and maintained to be infringement of laws on protection of economic competitions under Clause 2 Article 50, Part 1 Article 13 of the Law of Ukraine “On Protection of Economic Competition”, namely: abuse of a monopoly position in the market in the form of actions which could have resulted in restriction of consumer interests under the conditions of existence of significant competition in the market.

In the course of the case consideration it was found that Pivden RPUE included into the agreement on providing services of central cold water supply and sewerage the conditions which failed to correspond with the content of the Framework Agreement whose form was approved by the resolution of the Cabinet of Ministers of Ukraine dated 21.07.2005 No. 630, as a result of which consumers were unable to execute all their legal rights, and the scope of the service provider`s obligations according to the legislation was reduced.

Pivden Residential and Public Utility Enterprise of the Mykolaiv City Council was imposed the fine in the amount of 50 thousand hryvnias upon for the committed infringement.

- iv) The Administrative Board of the Poltava Regional Office of the Antimonopoly Committee of Ukraine imposed a fine in the amount of 68 thousand hryvnias on Zhytlovo-Ekspluatatsiina Orhanizatsiia No. 2 Public Utility Enterprise of the Poltava City Council.

In the course of the case consideration it was found that inaction of ZhEO No. 2 PUE as the asset holder of elevators in part of non-fulfilment of its obligations to provide for ordering and arranging expert examination of equipment (elevator) according to the established procedure and terms led to suspension in operation of 125 elevators in the City of Poltava, and was an infringement in the form of abuse of a monopoly (dominant) position by way of inaction which could have resulted in restriction of consumer interests, which would have been otherwise impossible under the conditions of existence of significant competition in the market.

36. The share of abuse of a monopoly (dominant) position in the markets of the fuel and energy industry made 13.64 percent of the total number of infringements of this type in 2014.

Examples:

- i) The Committee found actions of Poltavaoblenergo Public Joint Stock Company in part of establishing unreasonable requirements in the technical specifications in 2010 - 2012 resulting in restriction of consumer interests, which would have been otherwise impossible under the conditions of existence of significant competition in the market of services of issuing technical specification of engineering provision of electric power supply to the customers` (natural persons` and legal entities`) sites for connecting (increasing connected power) customer`s electric installations to own local electric power networks of Poltavaoblenergo PJSC located in the Region of Poltava, to be infringement of laws on protection of economic competition in the form of abuse of a monopoly (dominant) position.

Poltavaoblenergo PJSC was fined in the amount of 50 million hryvnias for the infringements committed. Poltavaoblenergo PJSC was fined in the amount of 50 million hryvnias for the infringements committed.

The unscheduled on-site inspection conducted by the Committee together with the National Commission for State Regulation of Energy and Public Utilities and the Committee for State Energy Supervision and Control found that Lvivoblenergo PHSC included requirements regarding uniting meters installed in individual houses and residential blocks of apartments into the automated system of commercial electric power accounting (ASCEPA) into its compulsory technical specifications issued by the customer from January 01, 2010 until the first six months of 2014.

Establishment of such requirements is not provided for in the legislative instruments in the energy sphere and could have been possible as a result of a monopoly position of Lvivoblenergo PJSC in the market of services of issuing technical specifications. At the same time, if customers fulfilled such requirements, it could result in unreasonable increase in the cost of 1 m² of newly built residential premises.

Establishment of such requirements would have been otherwise impossible under the conditions of existence of significant competition in the market.

The Committee found such actions of Lvivoblenergo PJSC to be abuse of a monopoly (dominant) position. Lvivoblenergo PJSC was fined in the amount of 400 thousand hryvnias for the infringement committed and was obliged to eliminate consequences of the infringement.

37. In 2014, **7.23** percent of abuses of a monopoly (dominant) position were detected in the markets of connecting urban development objects, including objects of residential development to networks of electric power, gas, heating, water supply and sewerage.

Examples:

- i) Ternopil Regional Office of the Committee found actions of Ternopilniskgaz Public Joint Stock Gas Supply and Gasification Company regarding concluding agreements in breach of legislative instruments with consumers which could have resulted in restriction of consumer interests as well as unreasonable charging of losses for consumed gas from consumers to be infringement of laws on protection of economic competition in the form of abuse of a monopoly (dominant) position.

Ternopilniskgaz Public Joint Stock Gas Supply and Gasification Company was fined in the amount of 148 thousand hryvnias for the infringements committed.

- ii) As a result of the unscheduled on-site inspection of Kyivgaz PJSC compliance with the laws on protection of economic competition in the course of connection of the customers' objects to gas networks, the Kyiv City Office of the Committee found that the company had established the increased cost of the services of issuing technical specifications for gas supply to the consumers' objects for the amount of 1,924.22 hryvnias.

Analysing calculations of elements of the cost of services of issuing technical specifications for gas supply of the consumers' objects found that labour cost standards for issuing technical specifications approved by Kyivgaz PJSC substantially exceeded actual labour costs and were unreasonable. The Administrative Board of the Office found such actions to be infringement of laws on protection of economic competition under Clause 1 Part 2 Article 13 of the Law of Ukraine "On Protection of Economic Competition", and imposed a fine in the amount of 68 thousand hryvnias on the defendant.

Besides, the Administrative Board of the Office obliged Kyivgaz PJSC to cease infringements of laws on protection of economic competition by bringing the cost of the services of issuing technical specifications for gas supply to the consumers' objects to the economically justified level.

Kyivgaz PJSC paid the fine to the national budget and established the economically justified cost of these services, decreasing it by 40.8 percent.

38. A number of the events of abuse of a monopoly (dominant) position of price nature was detected and stopped in the markets of communication and telecommunication services.

Examples:

- i) According to the decision of the Committee, actions of Ukrtelecom Public Joint Stock Company in terms of transferring a part of subscribers of Ukrtelecom PJSC from hourly payment to non-hourly payment for local communication due to taking local telephone communication accounting equipment (hereinafter the "LTCA equipment") whose service life has not expired out of operation on grounds of the order of Ukrtelecom PJSC dated January 17, 2011 No. 11 "On taking the LTCA Equipment out of Operation", were found to be infringement under Clause 2 Article 50, Part 1 Article 13 of the Law of Ukraine "On Protection of Economic Competition" in the form of abuse of a monopoly (dominant) position in the regional markets of local telephone communication services.
- ii) The conducted examination demonstrated that such actions resulted in Ukrtelecom PJSC applying tariffs for local telephone communication for residential subscribers of the local

telephone network of cities and regional centres and subscribers of the local telephone communication of villages and urban villages, except for regional centres, which were substantially higher than the ones applied when the LTCA equipment was operated, which, in its turn, could have resulted in restriction of consumer interests, which would have been otherwise impossible under the conditions of existence of significant competition in the market.

With regard to the infringements committed Ukrtelecom PJSC was fined in the amount of 400 thousand hryvnias.

- iii) In the communication sphere the Committee provided Ukrtelecom PJSC with mandatory recommendations to be considered, namely to review tariffs for services of granting use of direct communication lines between two endpoints in the local telephone network, and establish them at the level which would have existed under the conditions of significant competition in the market.

The conducted examination found that Ukrtelecom PJSC approved tariffs for arranging and using the direct communication lines which increased 5 to 16 times for telecommunication operators and providers subject to residential settlements.

According to the results of January - September 2014 Ukrtelecom PJSC had attributes of a monopoly (dominant) position in the market of services of granting use of direct communication lines between two endpoints in the local telephone network within administrative entities of Ukraine where telecommunication networks (direct communication lines) of Ukrtelecom PJSC are located.

Ukrtelecom PJSC informed the Committee of taking measures aimed at cessation of actions with attributes of infringement of laws on protection of economic competition.

The Administrative Board of Ivano-Frankivsk Regional Office of the Committee provided mandatory recommendations to Dyrektsiia Zamovnyka Public Utility Enterprise to be followed.

As it was found in the course of the examination, actions in the form of failing to provide consumers with the information on the list of current works, calendar terms of their performance and cost estimate, failing to provide consumers with completion certificates to be signed, as well as in the form of charging payment for current works (replacement of certain parts of the water pipe in the stand pipe) in full scope, without account of reduced payments for sight-impaired people of the I category established by the decision of Ivano-Frankivsk City Council dated 03.08.2010 No. 200-56, contained attributes of the infringement under Clause 1 Part 2 Article 13 of the Law of Ukraine "On Protection of Economic Competition" in the form of abuse of a monopoly (dominant) position in the market of services of maintaining buildings and constructions and adjacent territories by way of setting such sales prices for the goods which would otherwise have been impossible under the conditions of existence of significant competition in this market.

The recommendations of the Committee were considered and followed.

For the purpose of preventing infringement of laws on protection of economic competition the Committee provided economic entities with 6 findings with regard to classification of actions according to Article 13 of the Law of Ukraine "On Protection of Economic Competition".

For instance, the Committee provided the findings with regard to the actions of Kyivenergo PJSC in the form of setting a different size of penalties (fines) when concluding agreements on connection to electric power networks with different contracting parties. After the provided

materials had been analysed, the conclusion was made that such actions could have contained attributes of the infringements under Article 13 of the Law of Ukraine “On Protection of Economic Competition” under certain circumstances.

2.2 Mergers and acquisitions

39. In 2014 the Committee considered **781** applications issuing authorisations for concentration of economic entities (in 2013 – 962 applications). Decrease in the number of applications occurred due to the general reduction of investment activity in Ukraine in 2014.

40. At the same time, more than **80.8** percent of applications (631 applications) were received from foreign investors or enterprises with participation of foreign investors. The share of applications increased from 71.2 to 80.8 percent as compared with 2013.

41. During the reporting year the Committee granted authorisations with regard to **501** events of concentration of economic entities.

42. In 280 cases the applications were returned to the applicants with no consideration, or the participants of concentration declined implementation thereof prior to adoption of the Committee’s decision (in 2013 – in 183 cases). The applications were returned with no consideration mainly due to lack of information contained in the materials provided, and refusal from concentration – due to risk of its possible prohibition owing to negative consequences for competition detected in the course of consideration of respective applications.

43. The vastest types of concentration of economic entities authorised by the Committee in 2014, similarly to past years, were purchase of shares (stock, equity interests) – 83.3 percent of the total quantity, acquisition of control in other forms – 7.2 percent and joint incorporation of an economic entity– 4.4 percent.

44. Out of the total number of events of granting of authorisation for economic concentration considered in 2014, with regard to **476** events (60.95 percent of the total number) its conditions and the composition of participants held no threat of monopolisation of markets and required no advanced examination. Following the results of consideration of these applications the Committee granted authorisations for economic concentration without consideration of cases.

45. For the purpose of preventing monopolisation of markets(in particular, such as refractory materials, clay, diesel motors, bearings, large domestic appliances, retail trade in light petroleum products, medicinal products, compulsory insurance of passengers against accidents in railway transport, low alcohol beverages, dry food for dogs and cats, etc.), advanced examination and possible prohibition of concentration during 2014 the central administration of the Committee opened **85** cases on concentration, out of which **25** cases on concentration were considered in 2014, and as a result authorisations were granted (in 2013 23 cases with regard to concentration were considered).

46. The bodies of the Committee pay special attention to cases of economic concentration with participation of monopoly formations.

47. Thus, during the previous year, for the purpose of preventing monopolisation of markets and/or elimination of negative effects on competition from concentrations/concerted actions of economic entities, in particular, in the markets of natural gas, agricultural equipment, fabric softeners, purified palm stearin, etc., authorisations for such concentrations/concerted actions were grounded on certain obligations whose performance would eliminate negative effects of concentration/concerted actions on competition.

48. During the accounting year the bodies of the Antimonopoly Committee considered **94** applications for granting of authorisations for concerted actions of economic entities.

49. In **44** cases as the conditions of concerted actions held no threat of monopolisation of goods markets, the authorisations for forming them were granted with no imposition of additional obligations.

50. During the accounting year the Antimonopoly Committee of Ukraine considered **3** cases with regard to granting of the authorisation for concerted actions of economic entities, as certain grounds for prohibition of concerted actions or the conduct of advanced examination existed.

51. With regard to **11** cases the Committee conditioned granting of the authorisation for formation of the concentration or taking concerted actions by economic entities with certain requirements and obligations (remedies) as concentration or concerted actions might have produced a negative impact upon competition.

Examples:

1. The Antimonopoly Committee of Ukraine considered the case with regard to concentration whose participants were economic entities operating in the market of natural gas supply to the territory of Ukraine in the reverse mode.

In the course of the case consideration it was found that reverse of natural gas to the territory of Ukraine was performed by economic entities – non-residents of Ukraine that were not subject of such purchase.

At the same time, control relations between the purchase object and economic entities – non-residents of Ukraine which performed supply of natural gas to the territory of Ukraine by means of reverse could have led to disruption of such supply.

For the purpose of prevention of negative influence on the gas market the Committee granted authorisation on grounds of obligations.

The Antimonopoly Committee of Ukraine took a decision to:

- i) Grant an authorisation for the applied concentration.
- ii) Oblige the company which was the subject of purchase to cease control relations with the selling company for the purpose of preventing possible negative influence of concentration onto the natural gas market.
- iii) Provide the Antimonopoly Committee of Ukraine with copies of documents confirming cessation of control within three months from the moment of performing concentration.

2. The Antimonopoly Committee of Ukraine considered the case on concentration whose participants were economic entities – non-residents of Ukraine operating at the territory of Ukraine and selling washing powder and fabric softeners.

Taking into consideration the significant share of concentration participants in the marker of fabric softeners, the Committee started an integral advanced examination of concentration cases. In the course of the case consideration it was found that:

- the market of fabric softeners was in the stage of formation and active development;
- goods market of fabric softeners was the market of ancillary (supplementary) goods for the market of principal washing facilities;
- the share of concentration participants in the market involved did not exceed 30 percent;
- the share of the largest competitor was almost twice higher than the aggregate share of concentration participants;
- any administrative barriers/restrictions of products import into Ukraine were absent;
- new foreign manufacturers were actively entering the market of fabric softeners;
- the market was characterised by substantial power of the buyer: trade chains,
- therefore, the given concentration did not lead to monopolisation or substantial restriction of competition in the market involved.

At the same time, taking into consideration the significant share of the concentration participants in the fabric softeners market, as a result of consideration of the given case it was decided to grant an authorisation for concentration on grounds of certain obligations.

3. The Antimonopoly Committee of Ukraine considered cases on concentration and concerted actions with participation of the American group of companies producing agricultural equipment, and the Russian group of companies performing, in particular, activity in the sphere of producing and selling versatile motor vehicles, with regard to establishment of joint ventures producing and selling agricultural equipment.

Taking into account significant shares of one of the concentration participants in individual markets of agricultural equipment (tractors, press graders, headers) as well as the fact that the joint venture planned to enter these Ukrainian markets in the future, the Antimonopoly Committee of Ukraine started integral advanced examination within the framework of considering cases on concentrations and concerted actions.

In the course of consideration of the concentration case it was found that in the markets involved there was a significant number of both foreign and national competitors producing and supplying agricultural equipment, components and spare parts for such equipment. There was also second-hand equipment in the market.

With account of the foregoing, these concentrations did not lead to monopolisation or significant restriction of competition in the goods markets of Ukraine.

At the same time, for the purpose of preventing negative influence onto competition, as a result of case consideration decisions were taken to grant an authorisation, and obligations were imposed.

4. The Antimonopoly Committee of Ukraine considered cases on concentration in the form of: First Pacific Company Limited together with Wilmar International Limited acquiring indirect control over W Singapore Holdings Pte. Ltd;

W Singapore Holdings Pte. Ltd. purchasing shares of FP BidCo Australia Pty Ltd, providing for excess of 50 percent of shares in the supreme management body of the company;
W Singapore Holdings Pte. Ltd. indirectly purchasing shares of Goodman Fielder Limited (City of North-Ride, Australia), providing for excess of 50 percent of shares in the supreme management body of the company.

The Antimonopoly Committee of Ukraine considered cases on concentration in the form of:

- First Pacific Company Limited together with Wilmar International Limited acquiring indirect control over W Singapore Holdings Pte. Ltd;
- W Singapore Holdings Pte. Ltd. purchasing shares of FP BidCo Australia Pty Ltd, providing for excess of 50 percent of shares in the supreme management body of the company;
- W Singapore Holdings Pte. Ltd. indirectly purchasing shares of Goodman Fielder Limited (City of North-Ride, Australia), providing for excess of 50 percent in the supreme management body of the company.

The purpose of the given transactions was acquisition of joint control over Goodman Fielder Limited by First Pacific Company Limited and Wilmar International Limited.

The market of purified palm stearin was examined in the course of case consideration. The Committee found that those concentrations did not lead to monopolisation or significant restriction of competition in the respective market, so it granted an authorisation for the actions claimed.

At the same time, it was found in the course of the case consideration that the share of First Pacific and Wilmar Groups in the market of purified palm stearin was significant, those concentrations could have certain negative influence onto competition in the respective market which could be eliminated if the concentration participants performed certain obligations associated with non-performance of anticompetitive concerted actions in the market of purified palm stearin.

The applicants voluntarily assumed responsibility for performing obligations imposed.

5. In addition to preliminary control over economic concentration of economic entities, in 2014 the Committee took actions with regard to detection of infringements of laws on protection of economic competition in the form of the formation of concentrations with no consent of the Antimonopoly Committee while it was required.

Thus, during 2014 the Committee detected 35 infringements of laws on protection of economic competition in the form of the formation of concentration with no consent of the bodies of the Committee while it was required.

Thus, the international company group performing investment activity in different spheres of economy and selling chemical products, consumer industry products, construction materials, providing telecommunication services, etc. at the territory of Ukraine purchased shares of six economic entities without respective authorisation of the bodies of the Antimonopoly Committee of Ukraine while it was required.

For the purpose of eliminating infringements of laws on protection of economic competition, the buyer submitted respective applications to the Committee in order to receive an authorisation for concentrations.

With account of the fact that issuers did not operate at the territory of Ukraine, those concentrations did not lead to monopolisation or significant restriction of competition in the goods markets of Ukraine.

As a result of considering these applications, the Committee imposed fines for the infringements under Clause 12 Article 50 of the Law of Ukraine “On Protection of Economic Competition” in the amount of 300.0 thousand hryvnias, and granted authorisations for those concentrations.

6. The Antimonopoly Committee of Ukraine considered the case on infringement of laws on protection of economic competition by Propan Subsidiary Enterprise of Zhytomyrgaz Public Joint Stock Company (City of Zhytomyr) by way of forming the concentration by renting assets which provided for economic activity of selling condensed hydrocarbon gas for household needs and belonged to Vinnytsiagaz Public Joint Stock Company (City of Vinnytsia) without a respective authorisation of the bodies of the Antimonopoly Committee of Ukraine while it was required.

This concentration was formed in December 2012. The fact was detected by Vinnytsia Regional Office of the Committee when it was fulfilling its functional duties.

The Antimonopoly Committee of Ukraine did not receive an application from Propan SE of Zhytomyrgaz PJSC for being granted an authorisation for renting the given assets. In addition, Propan SE of Zhytomargaz PJSC did not admit having committed the infringement.

As a result of the case consideration, with account of the fact that concentration did not lead to monopolisation or significant restriction of competition in the goods markets of Ukraine, the Committee fined Propan SE of Zhytomaygaz PJSC for 100.0 thousand hryvnias.

7. The Antimonopoly Committee of Ukraine considered the case on infringement of laws on protection of economic competition by DOBRODIIA TRADE LLC (City of Kyiv) by forming concentrations via acquiring control over Ahrofirmu “ZAKOTNENSKA” Agricultural Limited Liability Company (Village of Zakotne, District of Novopskovsk, Region of Luhansk) and Dobrodiia Foods (City of Kyiv) without an authorisation of the bodies of the Antimonopoly Committee of Ukraine while it was required.

DOBRODIIA TRADE LLC acquired control over AF ZAKOTNENSKA ALLC and DOBRODIIA FOODS LLC in March and April 2014.

The Committee received applications from DOBRODIIA TRADE LLC for being granted an authorisation for acquisition of control over AF ZAKOTNENSKA ALLC and DOBRODIIA FOODS LLC in the middle of July 2014, i.e. after those concentrations had been formed.

DOBRODIIA TRADE LLC admitted to having committed the infringement and supported in the Committee in the case consideration.

With account of the foregoing as well as the fact that concentrations did not lead to monopolisation or significant restriction of competition in the goods markets of Ukraine, the Committee gave an authorisation for the actions claimed and imposed a fine in the total amount of 50.0 thousand hryvnias.

52. During 2014 the bodies of the Committee provided **114** preliminary findings with regard to the issues of economic concentration and concerted actions, which was 21.28 percent more than in 2013.

53. Receipt of preliminary findings enabled economic entities to clarify the necessity of applying for gaining the authorisation allowing them to save time and money, avoid infringements of laws on protection of economic competition in the form of the formation of concentration or concerted actions with no authorisation of the Committee when such authorisation was required. Furthermore, provision of preliminary findings by the bodies of the Committee prevented formation of economic concentration that might have resulted in restriction of competition in goods markets.

54. For the purpose of prevention of infringements and potential monopolisation of goods markets the Committee continuously monitored the sources of mass media (Internet editions, periodicals, etc.) and actively engaged regional and city offices. The Antimonopoly Committee of Ukraine systematically forwarded initiative inquiries to economic entities with regard to providing participants of markets with information and clarifications in respect of the necessity to apply to the Committee for receipt of a preliminary authorisation for concentration.

55. In 2014 the Committee sent approximately fifty initiative inquiries to economic entities with regard to provision of information and clarifications to economic entities in respect of the necessity to apply to the Committee.

56. Results of monitoring of mass media demonstrated facts of infringements of laws on protection of economic competition by forming concentrations without respective authorisations of the bodies of the Antimonopoly Committee of Ukraine when they were required.

57. Furthermore, the Committee actively cooperates with the regulatory and law enforcement bodies in the sphere of control of concentrations and concerted actions, engages industrial experts in examination of markets.

58. The Committee has a transparent position while considering applications for concentration/concerted actions.

59. For instance, in 2014 the Committee introduced the new way of cooperation with applicants: work meetings with applicants' representatives for the purpose of clarifying the Committee's strategy, sequence of actions while considering concentration cases and analysing defects of the information provided by applicants.

60. In particular, work meetings were held with representatives of the following companies: Fresenius (Germany), Archer Daniel Midland, Whirlpool Corporation, General Electric, AGCO Corporation (all from the USA), Japan Tobacco (Japan) as well as a deputy counsellor for economic affairs of the Embassy of the USA.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

61. Operation and development of efficient competitive environment in Ukraine are provided by introduction of the unified competition policy by all public authorities and local government authorities by participating in development and implementation of this policy, interacting with the bodies of the Antimonopoly Committee of Ukraine on issues of competition development.

62. Assessment of influence of legislative instruments and other decisions of public authorities onto competition is an important aspect of supporting and promoting competition development. Anticompetitive

decisions of public authorities and regulations directly influence the situation in the goods markets, can affect competition and have a long-term nature both for the region and Ukraine in general.

63. During 2014, the Antimonopoly Committee of Ukraine processed 1,598 drafts legislative instruments, other decisions and decisions of public authorities. Out of them coordination of 344 documents was rejected.

64. Commentaries and propositions were provided in respect of 461 acts with regard to bringing them into compliance with the provisions of laws on protection of economic competition. In 115 cases the propositions of the bodies of the Antimonopoly Committee of Ukraine were considered.

65. As a result of considering the draft Law of Ukraine “On Mandatory Separation of Types of Activity in Electric Energy” which is being developed in execution of the Law of Ukraine “On Principles of Functioning of the Electricity Market of Ukraine”, the Committee provided its comments with regard to necessary of taking into consideration the provisions of the Law of Ukraine “On Protection of Economic Competition” in the draft law, in particular, in terms of governing relations associated with concentration of economic entities. Also, the Committee suggested providing a detailed definition of the term “separation of types of activity in electric energy” for the purpose of prevention of infringements of the competition legislation while fulfilling provisions of this Law.

66. Moreover, the Committee offered the drafter to define a legal status of “an independent authorised person” provided for in the draft law responsible for execution of the programme with regard to preventing conflict of interests and taking non-discrimination measures within the framework of separation of types of activity in electric energy, ways of providing for independence of such person and ways of financing its activity.

67. The Committee also drew attention of the Ministry of Energy and Coal Industry to the fact that it was necessary to define sources of financing permanent and alternating expenses of the electricity distribution enterprise as well as tasks and designation of the funds obtained by the electricity distribution enterprise for its services in the draft law.

68. Moreover, the Committee offered the drafter to consider an option of completing the draft law and specifying that the consumer shall conclude an agreement only with the electricity supplier.

69. The draft Law of Ukraine “On Mandatory Separation of Types of Activity in Electric Energy” with account of the given commentaries was sent to the Committee for consideration.

70. As a result of completion of the draft Law of Ukraine “On Lotteries in Ukraine” sent to the Committee by the Ministry of Finance of Ukraine to be approved, the following commentaries were provided.

71. Thus, the draft law provided for establishment of the National Arranger of State Lotteries, i.e. a legal entity with 100% of state ownership in the authorised fund arranging and holding state lotteries.

72. According to the draft law, the National Arranger of State Lotteries would be imposed with exclusive authorities with regard to arranging and holding state lotteries, and spheres of activity of the National Arranger of State Lotteries would be defined, uniting control functions (development and implementation of control and technical conditions in the sphere of holding state lotteries, defining conditions of holding lotteries, etc.) and economic functions (concluding agreements with state lottery operators, immediate holding of lotteries, etc.).

73. On the other hand, the procedure for state lottery operators to enter the market, conditions to be complied with by economic entities intending to hold state lotteries, the procedure for their selection by the National Arranger of State Lotteries were not provided for in the draft law, which could have put these economic entities into unequal conditions.

74. At the same time, according to the draft law, state lottery operators were provided with a number of privileges (exemption from licensing, substantially simplified requirements to arranging and holding lotteries, etc.) as opposed to non-state lottery operators.

75. In its commentaries for the Ministry of Finance of Ukraine the Committee stated that absence of the transparent procedure for governing legal relations arising between the National Arranger of State Lotteries and state lottery operators as well as absence of licensing for the latter, as opposed to non-state lottery operators, could lead to negative influence onto competition in the lottery market. Conditions for entering the market shall be equal and transparent both for state and non-state lottery operators. At the same time, a mechanism of rigid control over activity of all economic entities in the given market shall be provided for by the central executive body ensuring formation and implementation of state financial policy, and the only grounds for imposing penalties thereon, including cancellation of the license, shall be incompliance with the operations rules in the market by economic entities.

76. Therefore, unfair participants shall be forced from the market by market means which would exclude a possibility of infringements of laws on protection of economic competition.

77. In addition, the Committee suggested excluding from the draft law the provision according to which the Antimonopoly Committee of Ukraine was included into the list of bodies performing control in the lottery sphere. The Committee`s commentaries were considered in part.

78. The Committee provided commentaries to the draft Law of Ukraine “On Amending Some Laws of Ukraine with Regard to Tariff Setting in the Sphere of City Electric and Motor Vehicle Transport” sent by the Ministry of Infrastructure of Ukraine.

79. In the draft law provided it was offered to include development and approval of procedures for and methods of calculating tariffs for services of the city electric and motor vehicle transport to the competence of local executive authorities and exclude this functions from the competence of the central executive body.

80. The Committee commented that such amendments (with account of the number of local executive authorities) would make it impossible to implement the unified tariff policy and could result in loss of control over tariff formation in the spheres of motor vehicle and local electric transport and, therefore, unjustified local tariffs. In its turn, it would lead to restriction of interests of consumers of services provided by economic entities which hold a monopoly position in the given markets. The Procedure for and Methods of calculating such tariffs shall be the same for all regions of Ukraine.

81. The Committee also provided commentaries to the draft Decree of the President of Ukraine “On Amending Clause 4 of the Regulations on the Ministry of Infrastructure of Ukraine” sent by the Ministry of Infrastructure of Ukraine.

82. In this draft Decree it was offered to exclude the paragraph associated with tasks of the Ministry of Infrastructure of Ukraine in the sphere of the tariff policy from the Regulations on the Ministry of Infrastructure of Ukraine, namely: approval of the procedure for setting, paying and using tariffs for services of the city electric transport and metro, and approval of the methods of calculating tariffs for passenger carriages by motor vehicle transport.

83. The Committee commented that the proposed amendments could result in loss of control over tariff formation in the spheres of motor vehicle and city electric transport. Also, development and approval of methods of and procedures for calculating carriage tariffs by local executive authorities (with account of their significant quantity) could result in establishing different approaches to calculation of tariffs in this socially important markets, setting unjustified tariffs for services of motor vehicle and city electric transport, which would in its turn lead to restriction of consumer interests and possible abuse of a monopoly position by economic entities providing these services.

84. The Committee provided commentaries to the draft Resolution of the Cabinet of Ministers of Ukraine “On Amending the Resolution of the Cabinet of Ministers of Ukraine dated 01.06.2011 No. 869” sent by the National Commission for State Regulation of Energy and Public Utilities (hereinafter referred to as the “NCSREPU”).

85. In particular, the draft resolution did not specify possible way of correcting or reviewing tariffs or their components in case of certain circumstances. The Committee commented that the content of this provision did not stipulate what measures were to be taken in the case defined in the resolution.

86. After the Commission took the commentaries into consideration, the Committee approved the draft Resolution of the Cabinet of Ministers of Ukraine “On Amending the Resolution of the Cabinet of Ministers of Ukraine dated 01.06.2011 No. 869”.

87. As a result of completion of the draft Resolution of the Cabinet of Ministers of Ukraine “On Approving Criteria of Assessing the Degree of Risk from Economic Activity in the Form of Medical Practice and Defining Frequency of Scheduled State Supervision (Control) Measures by the Ministry of Health Care, and Amending the Criteria Assessing the Degree of Risk from Activity in the Healthcare Sphere for Safety of Life and Health of Population and Defining Frequency of Scheduled State Supervision (Control) Measures”, the Committee provided commentaries with regard to irrelevance of including into such criteria a requirement of the economic entity’s certificate confirming correspondence to the quality management system introduced at the healthcare institution, requirements of the national standard DSTU ISO 9000, as well as absence of precise list of the criteria according to which an economic entity may be included into the category of economic entities with a minor degree of risk. After the commentaries were considered, the draft Resolution of the Cabinet of Ministers of Ukraine was approved.

88. The Ministry of Infrastructure of Ukraine took into consideration the Committee’s commentaries to the draft Resolution of the Cabinet of Ministers of Ukraine “On Amending the List of Special Services Provided in the Sea Port By Natural Monopoly Entities Subject to State Regulation” with regard to specifying definition of the service name which was proposed to be included into the draft resolution, and amending it as follows: “services of allowing port operators to use berths in operational control of the administration of sea ports of Ukraine” or “services of sea operators’ access to berths in the operational control of the administration of sea port of Ukraine”.

89. The Committee provided commentaries to the draft Order of the Ministry of Healthcare of Ukraine “On Amending the Order of the Ministry of Healthcare of Ukraine dated 02.02.2011 No. 49” providing for direct prohibition for the individual entrepreneur to perform economic activity by way of medical practice in certain medical spheres. The Committee had no objections to introduction of mechanisms of license regulation of activity in the sphere of medical practice, in particular, by way of forming respective requirements to the level of qualification, material and technical resources, etc. However, introduction of prohibition for individual entrepreneurs to perform economic activity by way of medical practice in certain medical spheres could have negative influence into the state of competition in the sphere of medical practice as it would lead to discrimination of economic entities of grounds of the legal form, thus contradicting to the provisions of the Constitution of Ukraine, Commercial Code of

Ukraine, laws on protection of economic competition. Due to the justified commentaries provided by the Committee the Ministry of Healthcare of Ukraine took a decision on inconsistency of adopting this regulatory act.

90. The Ministry of Healthcare of Ukraine took into consideration the Committee`s commentaries to the draft Order “On Amending the Order of the Ministry of Healthcare of Ukraine dated August 06, 2013 No. 693”, i.e. with regard to absence in the draft order of the exhaustive list of on-site and internal measures when performing clinic and expert assessment of quality and scope of provision of medical aid and medical services, which could create conditions for providing individual economic entities with privileges or other benefits putting them into favourable position in comparison with their competitors, possibly resulting in prevention, elimination, restriction or deformation of competition.

91. The bodies of the Committee provided commentaries to the draft Order of the Ministry of Finance of Ukraine “On Approving the Procedure for Holding a Tender to Define the Bank Authorised to Perform Settlements with the National Budget in Terms of Customs Payments”.

92. The given draft Procedure provided for, in particular, establishment of certain requirements to the bank authorised to perform settlements with the national budget in terms of customs payments by the tender committee; admission to the tender of Ukrainian banks of I and II groups (under certain conditions).

93. According to the decision of the Commission of the National Bank of Ukraine on Banking Supervision and Regulation dated 20.12.2013 No. 975 “On Dividing Banks into Groups”, banks were divided into four groups subject to the border of their assets amount. The legislation does not provide for bank restrictions in provision of bank services subject to the group of banks they belong to.

94. The requirement of admitting to the tender only those banks which belong to I and II groups restricted ability of other banks to participate in the given tender. The Committee suggested providing for such criteria of selecting an authorised bank which would potentially give all banking institutions an opportunity to participate in the tender.

95. At the same time, the draft Procedure stipulated that requirements to the authorised bank would be set by the tender commission. In this case an attempt was made to set individual requirements to candidate banks (belonging only to I and II groups of banks, absence of violations of economic regulations and non-application of influence measures for six months) compliance with which would admit banks to the tender.

96. However, those requirements were not exhaustive and sufficient for the tender commission to take a decision on the winner of the tender.

97. For the purpose of providing definite and transparent mechanism of selecting the bank to perform settlements with the national budget in terms of customs payments, the Committee suggested specifying the exhaustive list of requirements (selection criteria) to candidate banks without restrictions as for bank groups in the draft Procedure.

98. The Committee`s commentaries were taken into consideration by the Ministry of Finance while competing the draft Order of the Ministry of Finance of Ukraine “On Approving the Procedure for Holding a Tender to Define the Bank Authorised to Perform Settlements with the National Budget in Terms of Customs Payments”.

99. Besides, the Committee sent a number of initiative letters to public authorities and governmental authorities with propositions regarding solution of topical issues.

100. The Committee conducted an examination with regard to feasibility of holding monitoring and scientific support of mineral resource use as well as its high cost. As a result, the Cabinet of Ministers of Ukraine was sent a letter describing circumstances of the cases and propositions concerning ways of solving topical issues economic entities face when receiving an administrative service, i.e. a special authorisation for using mineral resources, their solution being possible only in the legislative framework. In particular, the Committee proposed the following:

- i) to amend the Resolution of the Cabinet of Ministers of Ukraine dated May 30, 2011 No. 615 “On Approving the Procedure for Granting Special Authorisations for Using Mineral Resources” in part of cancelling the mineral resource user’s compulsory provision of the paid positive opinion of the specialised state geological enterprise, institution, organisation belonging to the sphere of management of the body responsible for authorisation issue on grounds of the state examination of reports with regard to the results of geological examination of mineral resources as well as other geological materials as a mandatory precondition for extending the term or resuming effect of the special authorisation for using mineral resources. In case it is objectively necessary to provide a positive opinion on grounds of results of state examination in order to resume effect of the special authorisation, the resolution shall stipulate certain cases of such necessity and establish the minimum allowable term from the date of the last state examination when such opinion is necessary and, respectively, when it shall be ordered by the mineral resource user;
- ii) cancel the need to hold monitoring and scientific support of special conditions of using mineral resources by specialised state geological enterprises, institutions and organisations, which is today provided for, in particular, in the Resolution of the Cabinet of Ministers of Ukraine dated May 30, 2011 No. 615 “On Approving the Procedure for Granting Special Authorisations for using Mineral Resources”;
- iii) if the given works are necessary in individual cases, to provide for possibility of their performance directly by mineral resource users by establishing the respective procedure at the legislative level.

101. The foregoing topical issues and proposals as for their solution correspond to the opinion of representatives of a number of central executive bodies, in particular, the Ministry of Industrial Policy of Ukraine, the Ministry of Energy and Coal Industry of Ukraine, and Joint Representative Body of Employers at the national level.

102. The Committee sent a letter to the Cabinet of Ministers of Ukraine, the State Property Fund of Ukraine and Committees of the Verkhovna Rada of Ukraine on issues of entrepreneurship, regulatory and antimonopoly policy and on issues of tax and customs policy with regard to the need to solve a number of topical issues existing in the market of evaluation activity, namely concerning separation of evaluation for the purpose of taxation in legislative acts and its definition as an exclusive type of activity as well as adoption of subordinate legislative documents governing activity of legal entities in this sphere.

103. In its letter the Committee stated it was necessary to amend respective legislative acts, in particular, such as the Tax Code, the Law of Ukraine “On the State Property Fund of Ukraine” and the Law of Ukraine “On Amending Certain Laws of Ukraine on Privatisation with Regard to Implementation of the Provisions of the State Privatisation Programme for 2012-2014” aimed at cancellation of the separated and exclusive type of evaluation activity for the purpose of taxation and individual authorities of the Fund in this sphere.

104. The State Property Fund of Ukraine informed the Committee of the measures taken in order to solve topical issues stipulated in the Committee’s letter. Thus, the Law of Ukraine “On Amending Certain

Legislative Acts of Ukraine with Regard to Evaluation Activity Issues” excluded the provisions governing evaluation for the purpose of taxation.

105. Due to the examination conducted with regard to compliance with the legislative requirements to protection of economic competition when state enterprises subordinated to the administrative sphere of the Ministry of Internal Affairs of Ukraine provide services of temporary storage of vehicle in special areas and parking lots, the bodies of the Committee found that those tariffs of the state enterprise were economically unjustified, including by way of setting the increased cost effectiveness level.

106. The Committee sent the Ministry of Internal Affairs letters with regard to the need to develop and agree with the Committee the procedure for calculating tariffs for transportation and storage of temporarily detained vehicles in special areas as well as setting them at the economically justified level.

107. The Ministry of Internal Affairs of Ukraine informed the Committee of developing amendments to the joint order No.967/1218/869 which would provide for the differentiated tariff in special areas and parking lots as well as planned agreement of the procedure (mechanism) of their formation with the Committee.

108. One of the forms of interaction with public authorities and governmental authorities became collective meetings conducted in the premises of the Committee as well as the ones of other authorities. In particular, such meetings were held with participation of representatives of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine, the National Commission for State Regulation of Energy and Public Utilities, Association of Ukrainian Cities, the Ministry of Energy and Coal Industry of Ukraine, the Ministry of Economic Development and Trade of Ukraine, the State Statistics Service of Ukraine, the Ministry of Agrarian Policy and Food of Ukraine.

109. The meetings were mostly conducted for the purpose of discussing topical issues detected while examining markets of services associated with connection of construction objects to municipal networks of power and gas supply, and in the markets of milk and dairy products.

110. In 2014 the Committee coordinated its activity with 1,582 public authorities, local government authorities, bodies of administrative and service management and control.

111. The bodies of the Committee held 6,958 events in order to exchange information with public authorities, developed 7 joint orders and held 1,495 other events.

112. Professionals of the Committee participated in the work of 94 interdepartmental bodies and held 1,736 events in order to coordinate their activity with the law enforcement bodies.

113. The Committee held 25 joint inspections of monopoly formations with other public authorities, local administrative authorities, bodies of administrative and service management and control as a result of which 66 infringements of laws on protection of economic competition were detected.

4. Resources of Competition authority

4.1 Annual budget

114. The annual budget of the Antimonopoly Committee of Ukraine according to the Law of Ukraine “On the State budget of Ukraine for 2014” (including amendments) amount:

– 46,185.9 thousand (or USD 2,928,9 thousand at USD 1 = UAH 15,769 exchange rate).

4.2 *Number of employees*

115. Number of employees in the offices of the Committee: - 649

- economists – 326;
- lawyers– 190;
- other specialties – 127;
- other personnel;

The above information is valid for 2014.