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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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HEARING ON OLIGOPOLY MARKETS

-- Note by Ukraine --

16-18 June 2015

This document reproduces a written contribution from Ukraine submitted for Item 5 of the 123rd meeting of the OECD Competition Committee on 16-18 June 2015.

More documents related to this discussion can be found at www.oecd.org/daf/competition/oligopoly-markets.htm

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UKRAINE

1. According to the research of regional markets services in the organization of retail trade in non-specialized stores food assortment in some regions of Ukraine were identified structural features oligopoly.
2. In some cities of Ukraine three trading networks of the city hold more than 60 percent of the market.
3. In particular share of the three largest retailers in the cities of Ukraine are: Dnipropetrovsk - 76%, Ternopil - 80%, Zaporizhzhya - 68%, Odesa - 68%, Kherson - 77%, Ivano-Frankivsk - 63%, Kirovograd - 64% , Lutsk - 60%, Khmelnytsky -61% of the market.
4. Existence of oligopoly in the market for the organization of retail trade in non-specialized stores food assortment in some regions of Ukraine has a negative impact on competition in those markets.
5. Such situation has resulted from the fact that all retail chains have been using the similar mechanism of cooperating with suppliers which leads to unreasonable increase in prices for commodities for end consumers. In particular:
 - Unprofitable settlements conditions have been established for suppliers in part of the commodities supplied into shops (payments have sometimes been deferred for up to 150 days);
 - Commodity suppliers have been imposed with additional services of retail chains which they have to pay substantial funds for. Neither defendant in the case has been able to provide the Committee with the economic substantiation or cost calculation of any services provided in the amount of 35;
 - Uneven distribution of risk in trade relations and production sectors;
 - Uneven relationship with information of participants in the retail trade;
 - Discrimination against the interests of small and medium enterprises.
6. In results in unreasonable increase in prices for food commodities for 20-30 % or more which are paid by end consumers.
7. In the Committee considered the case on the grounds of committing violations of trade networks in the form of anticompetitive concerted actions and decision of 29.04.2015 № 182-p, which recognized, in particular, retail - the defendants in the case, committed a violation, in the form of anticompetitive concerted actions in the market for the organization of retail trade in non-specialized stores food assortment Kyiv.
8. Also mentioned decision ordered retailers to stop violations of the law on protection of economic competition by bringing its activities, including contractual relations with suppliers and / or producers of goods and approaches to pricing to its customers in compliance with the legislation on protection of economic competition.

9. Implementation of these commitments should, in particular:

- The introduction of effective and non-discriminatory relations between suppliers / producers of goods and distribution networks;
- Eliminating barriers to investment and innovation in the production of goods;
- Approach Market small and medium businesses;
- Stabilization of commodity prices.

10. According to the Committee one of the steps on the implementation of those commitments there should be completed the drafting of the Rules of professional ethics on the positive experience of the European Union, acceptance and implementation of its retail chains and producers / suppliers. The said adjustment mechanism provides for contractual practices between networks and their suppliers in order to reach a mutually acceptable compromise reduce production costs and establish a higher level of prices for goods sold in retail chains. These rules can later become the basis for a legislative solution to the problems of domestic trade.

11. More than 70 percent of all drugs sold in Ukraine (or semi-finished products and raw materials for their manufacture) produced and imported from abroad. Therefore, the policy of foreign companies to promote their products in Ukraine is one of the most decisive influences on the quality of the product, its price, the state of competition in the market and so on.

12. The Antimonopoly Committee of Ukraine is considering a number of cases on the grounds of committing violations by foreign pharmaceutical companies, their representatives and wholesale domestic distributors of medicines in the form of anticompetitive concerted actions.

13. During the proceedings the Committee has found the existence of schemes of unjustified increase in prices of medicines due the existence of vertical restrictions imposed by foreign manufacturers of medicines on the distribution channels for their products in Ukraine and abroad.

14. The vast majority of foreign pharmaceutical companies supplies drugs to the territory of Ukraine only through their representatives associated with the pharmaceutical companies by control relationship.

15. However, in most cases, the exclusive right to import is not fixed by terms of contract. At the same time, foreign relations practices of pharmaceutical companies and their representatives in Ukraine indicate that in the case of the appearance of such representative the import of drugs a few months later begins to be performed solely through it.

16. Meanwhile, according to the agreements between foreign producers and distributors in Ukraine, the restrictions on exports of medicines outside the Ukraine are stipulated, which subsequently spread to the entire distribution channel by setting restrictions on such exports by all subsequent contractors.

17. Thus, the market of Ukraine is being closed for entry and exit of relevant products and the importing companies obtain market power, which is used to establish full control over the volume and directions of sale of medicinal products and correspondingly the level of prices.

18. Importers sell drugs to Ukrainian Wholesale distributors who perform drugs trade in a wide assortment set, including through public procurement for budget funds, and also to pharmacies.

19. In such circumstances, foreign pharmaceutical companies use in their relations with importers, and the last-mentioned – with Ukrainian distributors the following pricing.

20. The payment for delivered goods is carried by prepaid or deferred payment for the prices set by the agreement. At the same time, the cost of previously received and already sold goods can be adjusted (reduced) for the discount or bonus as provided in annexes to the agreement.

21. In this case, the grounds for granting such retro discounts and retro bonuses are:

- payment for goods pursuant to the contract;
- realization of medicines through competitive bidding;
- compliance with plans on purchase/sale of medicines set by the supplier;
- maintaining warehouse inventory;
- detailed reporting by distributor on sales volumes in the channels of distribution;
- realization of certain drugs to specific consumers etc.

22. Thus, due to such actions in the market actually there are two types of prices:

- nominal, which is specified in the contract and is the basis for the calculation of customs duties, trade margins, end customer prices, and is subject to the control of regulatory authorities;
- real - the price that includes discounts, and which exists only in relations between foreign pharmaceutical companies and their importers, and also between importers and Ukrainian distributors.

23. The cases materials show that discounts received by distributors are counted by last-mentioned only as additional income and not subject to further contractors and do not promote to lower prices for end customers.

24. Such approaches to price setting lead to overpricing of medicines by an average of 30 percent.

25. Moreover, in regard to a number of drugs, including many that have substitutes (generic), importers are establishing trade markups of 200 percent, and for some non-regulated products even up to 600 percent.

26. Thus, under the conditions of existence of nominal and real cash flows in channels of distribution of drugs, the government price regulation mechanisms, including through the introduction of reference pricing, price registration and setting maximum allowable markups on drugs, lose their effectiveness.

27. Antimonopoly Committee of Ukraine considered the case of concentration involving companies «abc» and «abc», which takes place in the markets of large household appliances.

28. During case consideration were investigated of major domestic appliances markets (cookers, hoods, dishwashers, refrigerators, freezers, microwave ovens, washing machines, dryers) with the assistance of independent experts.

29. Signs of significant competition in the markets are involved:

- presence of a significant number of competitors members involved concentration on markets (domestic, foreign and potential)
- no tariff restrictions on imported equipment,
- the rapid development of Internet commerce;
- low saturation of Ukrainian market of of major domestic appliances;
- decline in sales in the target markets through a critical economic situation and low incomes.

30. Antimonopoly Committee of Ukraine considered statements of companies «abc» and «abd» of permits concentrations that occur on the national market of coffee (roasted and ground, including coffee beans).

31. The said market is characterized by structural features of collective monopoly by one of the participants in the concentration (of «abc») and company «abc» and «abc», the combined share of these companies in the coffee market exceeds 50 percent.

32. Thus, the typology said collective monopoly is characterized by lack of cooperative behavior strategies among market participants including the following:

- in the coffee market in Ukraine, medium and small competitors abc Groups and companies «abc» and «abc», are able to compete with the three major players. Company «abc», «abc», «abc» have a significant presence on the Ukrainian market of coffee and are able to continue to compete with the three largest players and the applicant after the transaction;
- in addition, the vast majority of retailers in Ukraine, including retail chains «abc», «abc», «abc», «abc», «abc» and «abc» sells coffee under its own brands of retail chains. This shows that the largest market players do not limit the ability of consumers to sponsor its own access to the relevant market and does not control and is not affected and not on distribution channels;
- producers in the market constantly focused on developing innovative products and upgrade the package. Ukrainian coffee market is highly differentiated, making any identical behavior between the major players challenging;
- all market participants face significant competition from each other and actively invest in various promotional tools to attract new customers and / or to improve awareness of new products they launch;
- coffee market Ukraine has low entry barriers. There are no barriers to the supply of raw coffee beans in a competitive environment. The most costly component of coffee beans this product, the sale of which is carried around the world. New participants can either produce their own coffee or receive deliveries from producers, intermediaries who produce coffee for third parties. Since coffee production is easily transported, new members are not restricted in the choice of suppliers to those located in Ukraine. Thus, new entrants can choose among many manufacturers that can offer coffee at competitive prices.

33. Examples oligopolistic markets in the agricultural sector is the beer market, the market of sunflower oil. First of all we must consider the impact on the economy oligopolies because oligopolies existence creates distortions in the economy.

34. An example of a successful case is considered in the 2008 case against «abc» and «abc». Identified circumstances indicate the existence of oligopolies in the market of sunflower oil.

35. After hearing the actions of «abc» and of «abc», which was to unjustified increase from July to August 2007 wholesale prices for sunflower oil found a violation of legislation on economic competition protection in the form of abuse monopoly (dominant) position on the market of sunflower oil, by setting the selling price of goods that can not be set for the conditions of existence of significant competition in the market. According to a violation of «abc» and LLC «abc» fined 1 million USD each. Violators recognized the fact of the violation and paid the fine lowered wholesale prices of oil by 10-15 percent. This was confirmed in the course of the Review Committee.

36. *Identification and proof:* In a case there are certain difficulties associated with determining the limits of commodity market of sunflower oil and scope of the said market.

37. During the proceedings were used official data that provided the Ministry of Agriculture and Food, the State Statistics Service of Ukraine, Ministry of Economic Development and Trade. Also required materials have been received in association «abc» and consulting agencies that are engaged in the analysis of agricultural markets.

38. The committee considered information on the volume of sunflower oil production by small companies, calculated on the basis of statistical information.

39. Also was analyzed the economic activities of enterprises. The main evidence in the case, have business analysis defendants in the case and the lack of evidence that they face significant competition in the market.

40. First of all, the presence of competition leads to the need to find ways to reduce competitors for its products and minimizing the cost of their production, Instead circumstances established in the case, suggest otherwise.

41. In this case, the court proceedings were not as entities recognized violations paid fines and cease violation of legislation on economic competition protection.

42. Within sectoral specialization identified problems in some markets that can be characterized as oligopolistic, namely:

- market of medicines supply and sale;
- market of mobile services communications.

43. *Regarding market supply and sale of medicinal product:* In fact, market supply and sale of medicinal products markets include wholesale sales and retail sale of medicines.

44. The results of the study to establish channels of supply of medicinal products in bulk, it was found that the market for the supply of bulk drugs and medical devices in shyrokoasortymentomu set in 2013 operated 19 largest companies of Wholesale, four of them, with an aggregate share of 87 percent in early 2014 with signs of significant market power versus other available competitors due to the relatively small size of the market shares that belong to competitors. As a result of previous years the Committee research, it was discovered: the existence of schemes unjustified increase in prices of medicines as a result of vertical restraints imposed by major foreign companies - manufacturers have distribution channels for their products; during the rapid fall of the currency market participants often raised prices ahead of the growth dynamics of foreign currency.

45. Enterprises importing distribute products in Ukraine through a rather limited range of Wholesale companies.

46. Since importers often the prohibition promotes foreign manufacturer medicines among consumers that operate outside the territory of Ukraine and intend to distribute drugs outside the

territory of Ukraine. Importer *krupnooptovomu* company also provides discounts to the price of production bonuses in the form of non-repayable financial assistance, etc.

47. Today the Committee pending a number of cases of violation of legislation on economic competition protection when forming channels of medicines in Ukraine's largest foreign companies - manufacturers of medical products through the largest wholesale suppliers.

48. In 2014 the Committee had rendered to the entity compulsory recommendations to refrain from imposing unreasonable cost wholesale selling prices of medicines.

49. The study of regional markets retail sale of medicines in 2011 - 2013 years in some regions was found structural features oligopolies in certain territorial limits.

50. The most common price violations legislation on protection of economic competition in regional markets of retail sale of medicines in 2012-2013 defined as abuse of monopoly (dominant) position by setting high prices for medicines, that it would be impossible to establish the existence of substantial competition conditions in the market.

51. Overall, in 2013 by the Committee has taken the following comprehensive measures, aimed at the prevention, detection and suppression of violations of legislation on economic competition protection entities of all forms (private, collective, communal) property marketed products, namely:

- To prevent the violation of legislation on economic competition protection, provided the required 300 participants to consider the recommendations markets for drugs;
- To stop the actions that contain elements of violation of legislation on economic competition protection, provided 48 binding recommendations to market participants of drugs;
- The consideration of 73 cases of violation of legislation on economic competition protection.

52. *Regarding market of mobile services communication:* In Ukraine there are three largest mobile operators with total market share of over 98%. On the market of mobile services (mobile) communications Committee identified the following challenges.

53. Operators of mobile communications in Ukraine today used second tariff calls. That is billed first second of each minute a minute amount of that cost a certain tariff plan, thus forcing consumers to pay for services not actually used amount of time.

54. It should be noted that at present the existing rules of law do not forbid charging conditions.

55. To solve this problem a representative of the Committee in the working group on elaboration of the draft Law of Ukraine "On electronic communication" the National Commission for State Regulation of Communications and Informatization introduced and considered proposals that the legislation regulating billing service provider, depending on the time actually used by the consumer.

56. Currently pending before the Committee are three cases of violation of legislation on economic competition protection in the form of information dissemination, misleading, by declaring a second charging, while a fee is charged from the first second to the value of a full minute or thirty seconds.

57. Operators of mobile communication Ukraine change tariff plan without notifying consumers directly, but only were placing information about these changes on its official website.

58. As currently existing rules legislation does not oblige to inform market participants about changes in tariff plans directly to consumers, Committee representative in the working group on elaboration of the draft Law of Ukraine "On electronic communication" of the National Commission for State Regulation of Communications and Information made remarks and considered that the legislation obliging market participants for seven days to report about any changes to calling plans directly to consumers.

59. Conducting operators of mobile communication Ukraine promotions that may contain signs of legislation on protection of economic competition in the form of setting tariffs for telecommunication services related to participation in the action of consumers in economically unjustified, and the performance of operators during promotions - are signs of legislation on protection against unfair competition through the dissemination of information that is misleading.

60. Given the above, if faced with financial management and business affairs of the Committee on competition with similar problems and whether the practices to overcome them?