

Unclassified**English - Or. English****25 November 2019****DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Barriers to Exit – Note by Ukraine**

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This document reproduces a written contribution from Ukraine submitted for Item 8 of the 132nd Competition Committee meeting on 3-4 December 2019.

More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/barriers-to-exit.htm>

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Ukraine

1. Despite the importance of the issue of barriers to exit from the market, there is a tangible shortage of information on this subject. The presence of such barriers may significantly reduce the competitiveness of the industry by creating barriers to exit for unprofitable undertakings and thus creating barriers for the new market entrants. The very existence of such barriers may harm the overall efficiency of the national economy's functioning.

2. The concept of “barriers to exit” is interconnected with the concept of “barriers to entry”, as market participants always examine all the threats and obstacles to doing business on the market before entering it. Thus, the presence of these barriers may create obstacles to competition in the market and have a negative impact on economic growth. The main barriers to exit from the market in Ukraine are:

1. Regulatory environment. In Ukraine, the market exit procedure is too complicated and bureaucratic while usually being associated with bankruptcy. Bankruptcy cases in Ukraine shall be decided by arbitration courts upon receipt of a corresponding petition. Subject to the procedure established by the Ukrainian legislation, the arbitration court, upon acceptance of the bankruptcy petition, shall appoint the property manager for a period of up to six months while the procedure of reorganization or amicable settlement may commence. If the reorganization was not successful or was not carried out at all, no amicable settlement was concluded, the economic court shall issue a decree on recognition of the debtor as a bankrupt and launch the liquidation procedure, which shall not last more than 12 months.
2. Legislative regulation. The procedure for exiting the market in certain industries of the Ukrainian economy requires a special permission of the State bodies together with such a liquidation procedure that would allow avoiding any harm or threats to society.
3. Costs associated with the staff remuneration. Subject to the Ukrainian legislation, an undertaking is obliged to pay a severance pay to the staff employed upon termination of the employment contract on the grounds of liquidation, reorganization or bankruptcy of the undertaking, in the amount of not less than the average monthly remuneration unless otherwise provided by the legislation.
4. Costs that can not be recovered (non-recoverable losses). There are industries in the Ukrainian economy, which legally oblige the market participants to be in possession of significant assets and investments in order to have the right to carry out business activities in such industries. These assets and investments can not be recovered after exiting the market or used for entering another segment of such industry.
5. Existence of huge number of SOEs. The large market shares possessed by SOEs and politically connected firms appear to undermine competition and weaken efficiency incentives. A total number of 3,822 SOEs (as of January 1st, 2019) are registered in Ukraine, though only half of them are currently operational. In comparison with other countries, Ukraine has an exceptionally large number of markets with at least one SOE (19 markets). Ukrainian SOEs employ about 1 million people, which is roughly 5 percent of the national workforce. Many

Ukrainian SOEs lack a clear economic or public policy rationale to justify their existence while there is little indication that their benefits outweigh their costs. Ukrainian legislation explicitly prohibits privatization of some of the SOEs and this becomes a big barrier to exit from markets, where the SOEs are present.

6. In the conditions of economic development of Ukraine, there are industries that face legislatively regulated barriers to exit from the market. Such barriers are justified by the fact that the market players are too large and socially important to cease their activities without significant negative consequences for the country.
3. The Antimonopoly Committee of Ukraine (in terms of enforcement and advocacy work) has predominantly studied the barriers to exit from the market on the State Aid notifications. Industries with significant share of State Aid include, for example, mining enterprises. In case when a mining company in Ukraine is subject to liquidation, reorganization or conservation (in cases provided for by the Code of Ukraine on Subsoil, the Mining Law of Ukraine and EU acquis), it is eligible for State Aid to this regard.
4. One of the most prominent examples of markets in Ukraine that is hard to exit from is mining. Unprofitable enterprises in the mining industry face significant costs for the termination of their activities, therefore, as a rule, a decision is made to remain in the market rather than to carry out the liquidation procedure. This significantly distorts competition in the market and does not lead to the effective functioning of the industry. That is why these enterprises require State Assistance, the expected result of which is to increase the efficiency of the coal industry by eliminating unprofitable state-owned coal-mining and coal-processing enterprises.
5. The decision to liquidate a mining enterprise shall be taken by the Cabinet of Ministers of Ukraine at the proposal of the Ministry of Energy and Coal Industry of Ukraine which shall be agreed upon with the interested State authorities (including the relevant local authorities).
6. The Mining Law of Ukraine stipulates that the liquidation or conservation of a mining enterprise is carried out subject to a project approved by the owner (manager) of the mining enterprise. This project shall include:
 - socio-economic justification;
 - technical plan;
 - proposals for possible restoration of mining activities;
 - the use of mining equipment, buildings, structures etc for other purposes;
 - measures aimed at preventing dangerous impact on other enterprises, environment and people etc.
7. Only after having undergone all the environmental, technical and other impact assessments, having received approval of mining supervision, local and other interested State authorities, a mining enterprise may be liquidated.
8. The project of liquidation or conservation of the mining enterprise is approved simultaneously with a comprehensive plan for the social protection of the mine's employees being fired, the development of social infrastructure and the identification of funding sources for these measures.
9. Such a strict legislative regulation the coal enterprises liquidation is associated with significant costs to be spent on their closure. These costs include:

1. Costs associated with remuneration for employees:
 - social security expenses in connection with the retirement of workers before the established retirement age;
 - other special expenses for employees who have lost or will lose their jobs;
 - expenses covered by undertakings for the rehabilitation of workers in order to help them find a new job outside the coal industry (retraining);
 - health insurance of former miners;
 - supplying coal to workers who have lost or will lose their place of work for free (or a cash equivalent).
2. Regulatory costs:
 - liquidation costs associated with administrative, legal and tax regulations of the coal industry;
 - costs for the soil re-cultivation.
3. Non-recoverable costs:
 - cost for ensuring additional safety of underground operations to be carried out in connection with the liquidation of coal enterprises;
 - costs spend for fixing the landslides (if they were caused by coal mines);
 - all properly substantiated funds related to the re-cultivation of former coal mines, including the liquidation costs to be paid to the authorities responsible for the supply of water and sewage disposal;
 - costs associated with the termination or amendments to the existing contracts (at a maximum cost of up to income for 6 months) etc.

10. Thus, recognition of State Aid includes required identification of barriers to exit from the relevant market. Therefore, the decisions of the Antimonopoly Committee of Ukraine usually recognize the State Aid provided by the Ministry of Energy and Coal Industry of Ukraine to state-owned coal mining and coal processing enterprises recognize such State Aid as compatible with competition subject to the Law of Ukraine “On State Aid to undertakings”. Such assistance for mining enterprises establishes the conditions for effective exit from the market for unprofitable mining enterprises and provides the ground for the emergence of new stable enterprises in the coal mining industry.

11. As a result, the issue of assessing barriers to exit is important and relevant for the assessment of competition in the markets. The costs of unprofitable undertakings to exit the market are significant in most cases while the continuation of these enterprises’ business activities does not usually create additional benefits for the economy. At the same time, the opportunity to receive State Aid related to the liquidation of a list of non-profitable yet socially important enterprises in industries with significant barriers to entry, lowers the barriers for the new market entrants.