

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 2 on Competition and Regulation

**Co-operation between Competition Agencies and Regulators in the Financial Sector
- Note by Ukraine**

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More documents related to this discussion can be found at:
www.oecd.org/daf/competition/cooperation-between-competition-agencies-and-regulators-in-the-financial-sector.htm

Please contact Mr Chris PIKE if you have any questions about this document
[Email: Chris.Pike@oecd.org]

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Ukraine

1. The financial markets unit of the Department for markets research and investigation of non-production sector reports within the sectoral distribution about the topic of «10 years after the financial crisis: Cooperation between competition agencies and regulatory bodies in the financial sector».
2. The financial sector in Ukraine has its own regulators, which issue licenses, keep registers of professional participants in financial institutions, oversee market participants, monitor their solvency, make orders to eliminate identified violations of financial services legislation.
3. The regulator of the banking services market in Ukraine is the National Bank.
4. In the area of financial services markets, its regulator is the National Commission that carries out state regulation in the financial services markets, which carries out state regulation in the field of financial services markets (except for the market of banking services and markets of securities and derivative securities). The above-mentioned Commission carries out the state regulation of the insurance services markets, activities of credit unions, pawnshops, non-state pension funds.
5. State regulation of the securities market is carried out by the National Securities and Stock Market Commission, the main tasks of which are the implementation of state regulation and control over the issuance and circulation of securities and derivatives in the territory of Ukraine, and state regulation and control in the field of joint investment.
6. Each segment of the financial services market in Ukraine has a sufficient number of participants, which testifies to the functioning of these markets on a competitive basis.
7. For example, as of 01.01.2017, the activities in the financial services markets were carried out by:
 - 93 banks;
 - 308 insurance companies, of which 278 - risk insurance companies and 30 - life insurance companies;
 - 604 credit institutions;
 - 457 pawnshops;
 - 668 financial institutions;
 - 64 non-state pension funds;
 - 9 stock exchanges;
 - 301 securities traders;
 - 229 depository institutions;
 - 300 Asset Management Companies.
8. The 2008 crisis has had a profound impact on the ukrainian financial services market, in particular on the banking services market and its consumers.
9. After the crisis of 2008, a lot of complaints were received by the Committee from bank borrowers on the actions of banks that were to impose the services of a certain insurance company for the conclusion of an insurance contract provided by a loan agreement, the cost of insurance services was significantly higher than that of other insurance companies.

10. It was not easy for the AMCU to make a decision on this issue, since during the last 10 years a significant number of participants had been operating on the banking and insurance market. Therefore, there was a certain amount of collective meetings with associations of banks, insurance companies, associations protecting consumers' rights, regulators.

11. As a result, the largest Ukrainian banks were given the following recommendations:

- ensure the public disclosure of insurance companies and borrowers about the requirements of banks to insurers, including insurance contracts accepted by the bank as collateral for a loan, and the possibility of insurance of borrowers in any insurance company, which is checked by the bank, and meets its requirements. Such information should be provided by the bank, in particular by placing it on its own official website and on information stands, access to which is free to potential borrowers and insurers, in all premises of the bank, including branches and departments of such information;
- to prevent unreasonable bank failures in checking each insurance company for compliance with public requirements that the bank puts forward to insurance companies and their products, which was chosen by the borrower on its own, has shown the initiative to be checked by the bank and filed with the bank all necessary information;
- in case if the insurance company from among those who have been inspected by the bank and complying with the requirements of the bank has ceased to comply with such requirements, the bank shall be obliged in advance to inform in writing about the non-acceptance of insurance contracts of such an insurer as collateral for a loan or other condition of granting a loan, providing the appropriate justification for the decision taken.

12. Subsequently, by a joint application of a group of banks and insurance companies, the Committee granted permission for concerted actions by approving the rules of cooperation between banks and insurers related to lending that were aimed at establishing transparent, non-discriminatory rules of conduct of banks, insurers and other interested parties in the process of providing a bank loans, conclusion and further execution by the borrower and insurer of the insurance contracts on which the bank is the beneficiary, and determined the rules and mechanisms for establishing effective cooperation between banks and insurers.

13. Today, Ukraine has a special law on consumer lending, which regulates the general legal and organizational principles of consumer lending in accordance with international legal standards in this area.

14. The specified law:

- allows banks to determine the lists of third parties whose services are related in the course of lending (insurance companies, notaries, appraisers), in which borrowers have the right to acquire the necessary services related to their lending;
- prohibits banks in any way complicating the consumer's reading of the real annual interest rate and the total cost of the loan, including by printing in its font smaller than the main text, fusing the color of the font with the background color;
- obliges the banks, at the consumer's request, but not more than once a month, to inform them free of charge about the status of the account and to provide an account statement.

15. It should also be noted that after the crisis of 2008, legislative changes were made that increased the requirements for banks for the full disclosure of information on lending conditions in order to prevent the concealment of information on the real annual rate, the presence of hidden fees and other mandatory payments for additional and related bank services (commission for opening and keeping an account, crediting funds to an account, etc.).

16. The Antimonopoly Committee of Ukraine closely cooperates with regulators of the financial services market. This cooperation consists of joint working meetings, approval of projects of corresponding documents regulating business activity, establish rules.

17. The Antimonopoly Committee of Ukraine did not support the position of the National Bank of Ukraine regarding the establishment of a new process of work with insurance companies.

18. In order to minimize credit risk during crediting banks and support their liquidity, the National Bank of Ukraine provided for the establishment its own legal act of criteria (requirements) for solvency, liquidity and financial stability of insurers who have the right to insure property that is in collateral as ensuring the requirements of the National Bank of Ukraine; establishment of requirements for the list of insured risks for each type of security and conditions of insurance (franchise amount, exceptions in contracts on the occurrence of an insured event, etc.).

19. The above-mentioned position of the Committee is substantiated by the fact that the establishment of additional criteria (requirements) for insurance companies to insure the property that is in collateral as a security of the requirements of the National Bank of Ukraine, as opposed to those defined by the current insurance law, may lead to restriction of competition in the insurance market services.

20. Another example of ensuring financial stability that the Committee does not support is the Government's decision to change the procedure for selecting banks that are authorized to pay pensions, cash benefits and salaries to employees of budget institutions.

21. In the decision of the Government, the main requirement for banks is that the applicant bank should have assets that account for at least 1 percent of the assets of the banking system or a controlling interest must belong to international financial and banking institutions that have an international rating of the investment grade from internationally recognized rating agencies or the state should have a stake of over 75 percent.

22. The Committee does not endorse the decision of the Government, since after the crisis of 2008, even large banks whose assets exceeded 1 percent of the assets of the banking system were found to be insolvent, which had significant negative financial and consumer disappointments.

23. The Committee twice appealed to the Government with proposals to revise the requirements for selection of banks based on criteria that will enable banks to compete precisely because of their own achievements in the market.

24. One of the banks that lost the status of authorized person through the said decision of the Government appealed against the decisions of the Government in the court.

25. The court supported the position of the Committee and made a decision in favor of the bank. The court decision has come into force, but the Government has the opportunity to appeal it to the Supreme Court of Ukraine, which is the highest judicial body in the system of courts of general jurisdiction.

26. Recently, a surge in interest in the use of virtual currencies has been observed in Ukraine.

27. The official position of the regulator, the National Bank of Ukraine, is that it considers Bitcoin a "virtual currency / cipher money" as a money surrogate, which has no real value and can not be used by individuals and legal entities on the territory of Ukraine as a means of payment, as this contradicts the norms of Ukrainian legislation, and the National Bank of Ukraine recommends citizens to use the services of only officially registered payment systems and settlement systems.

28. At the same time, the Committee is aware that today the relevant working group is conducting a legal analysis of the status of Bitcoin and other cryptic currencies in Ukraine and in the world. The results of the analysis will be the basis for further developments in the legal and regulatory framework.