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ORGANIZATION OF ANTITRUST AND COMPETITION POLICY IN UKRAINE IN MODERN CONDITIONS

Summary:

Existing barriers to the development of competitive relations in Ukraine are the factors that cause low efficiency of the Ukrainian economy, which prevents its European Integration. The article represents the analysis of the state of competition in Ukraine and the results of the activity of Antimonopoly Committee of Ukraine. The article deals with the main forms of competition advocacy in Ukraine, the influence of modern AMC's tools on target groups and the measurement of the competition advocacy effectiveness. The priority areas of competition policy in order to implement Eurointegration strategy in Ukraine are determined.

Keywords:

competition policy, antitrust policy, Antimonopoly Committee of Ukraine, competition advocacy, competition advocacy effectiveness, competitive culture.

Introduction

"Dignity revolution" in Ukraine actualized the necessity of reformatting state regulation system, including competition field. Existing barriers to development of competitive relations are one of the factors that causes low efficiency of Ukrainian economy, impedes its European integration.

Now the main goals of competition policy in Ukraine are enhancing the functioning of the competitive environment, improving of its regulation mechanism in global changes, increasing of competition, particularly in the markets of socially important goods and services to ensure economic growth in the medium and long term.

Therefore, in conditions of acute economic and political crisis in the country, there is an urgent need to review the priorities and measures of antimonopoly and competition policy in order to stabilize and improvement of the economic situation, the transition to new forms and tools. Competition advoca-

cy is one of the components of competition policy and important aspects of the competition agency activity, a necessary condition for European integration of Ukraine.

On the one hand, the situation that emerged today in Ukraine is characterized with the increasing transparency of the Antimonopoly Committee of Ukraine (AMCU), strengthening antimonopoly regulation of individual markets and industries. However, on the other hand, many entrepreneurs recognize that their level of knowledge in the field of competition and antitrust regulation is rather low, resulting in violation of applicable laws and other adverse effects. The population also has little knowledge about the benefits of competition policy and competition for every single citizen. So, to solve this problem in Ukraine, as in other European countries, the new direction of competition policy, called competition advocacy, is becoming increasingly common in recent years.

Problems of competition advocacy are investigated primarily in publications of International Competition Network Advocacy Working Group¹, works published by Ukrainian and foreign scientists, such as: S. Avdasheva, O. Shastitko², H. Filyuk³, I. Knyazeva, O. Lukashenko⁴, O. Voznyuk⁵. Purpose of the article is to analyze the state of competition in Ukraine and the activity of AMCU; to identify the main forms of competition advocacy in Ukraine, study the influence of modern AMC's tools on target groups and evaluate the competition advocacy effectiveness; to determine the priority areas of competition policy in order to implement Eurointegration strategy.

¹ *Advocacy and Competition policy*. ICN's Conference, Naples, Italy, 2002. <http://www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf> (20.09.2015); *Advocacy Toolkit*. Part I: Advocacy process and tools. Prepared by ICN Advocacy Working Group. Presented at the 10th Annual Conference of the ICN, The Hague, May 2011 (online), <<http://www.internationalcompetitionnetwork.org/uploads/library/doc745.pdf>> (20.09.2015); *ICN Advocacy Working Group: Long-Term Strategic Plan 2011–2016*, 2011, <http://www.internationalcompetitionnetwork.org/uploads/library/doc760.pdf>. (20.09.2015); *ICN Advocacy Working Group: Work Plan for 2011–2012* ICN, 2011, <<http://www.internationalcompetitionnetwork.org/uploads/library/doc759.pdf>> (20.09.2015).

² S. Avdasheva, A. Shastitko, *Competition Advocacy: Subject Field of Problem and courses of action*, Moscow 2006, p. 42.

³ G. Filyuk, *Advocacy Competition as Part of the Competition Policy*, "Competition. Proceedings of the Antimonopoly Committee of Ukraine", 2011, no. 1, pp. 45–52.

⁴ I. Knyazeva, A. Lukashenko, *Transformation Antimonopoly Policy in the Competition Advocacy Policy under Current Economic Conditions*, Novosibirsk 2011, p. 302.

⁵ O. Voznyuk, *Instrument that Provides Efficiency in a Long Time Dimension*, "Competition. Proceedings of the Antimonopoly Committee of Ukraine", 2011, no. 3, pp. 45–52.

Main Thesis

The collapse of the Soviet Union and Ukraine's independence, fundamental changes in the economy set a complex task before Ukrainian government – to develop its own system of regulation of competitive relations and antitrust policy, create Antimonopoly Committee of Ukraine.

The main purpose of contemporary institutional changes in the competitive environment in Ukraine is the elimination of contradictions between formal and informal institutions through the embedding of new market standards in the public consciousness, the elimination of institutional vacuum through the growth of complementary institutions to stimulate development of competitive relations in the country.

It should be mentioned, that distorted reproduction of basic standards of competition prevents the development of competitive relations in Ukrainian society, has the so-called "cumulative" effect, when organizations established on the basis of ineffective norms strengthen chosen way of institutional reforms, and the consistent strengthening of unproductive changes occurs. There are two main directions of institutional changes in the competitive environment:

- reforming and improving the state-legal mechanism that should ensure effective regulation and protection of competition;
- implementing radical changes in the consciousness of society, forming elements of its self-regulating in the development and maintenance of an appropriate institutional structure of the economy.

The idea of a "strong" state, which is able to withstand the interests of monopolies and limited number of members of economic clans and groups, is very popular today in the Ukrainian society.

Now let us analyze the state of competition in Ukraine and the activity of AMCU. Table 1 represents the changes in indicators of structural preconditions for competition in Ukraine in 2013-2014.

Table 1. Changes in indicators of structural preconditions for competition in Ukraine

Types of markets	The share of companies operating in the market of a certain type in total amount of production (sales), %		
	2013	2014	Deviation in indicator
Competitive markets	45,7	47,5	1,8
Oligopolistic markets	16,9	15,4	-1,5
Markets characterized by dominance	29,9	25,4	-4,5
Monopolistic markets	7,5	11,8	4,3

Source: Annual Reports of Antimonopoly Committee of Ukraine, <http://www.amc.gov.ua> (15.09.2015).

The increase in monopolization was observed in 34 industries, including mining operations, production of beverages, wood processing and furniture production, production of rubber and plastic products, manufacture of computer and optical products, repair and installation of equipment, land transport, warehousing and supporting activities in transport, hotels and restaurant business, activity of travel agencies and security services and others.

Antimonopoly Committee of Ukraine combines measures of strengthening antimonopoly regulation of individual markets and industries (enforcement policy) with measures of competition advocacy. During the analysis, we found the low level of enforcement policy effectiveness. Budget financing of Committee was UAN 50.16 million last year, but the amount of fines and penalties to the state budget paid by violators of the legislation on economic competition protection was only UAH 29.8 million (while AMCU imposed UAH 99.3 million of fines on violators of the legislation). On the other hand, the amount of warnings by AMCU wrongful losses and expenses of economic agents was UAN 753.5 million. Table 2 represents comparison of the results of AMCU's activity in 2011, 2012 and 2014.

Table 2. Comparison of the results of AMCU's activity in 2011, 2012 and 2014

Indicators	2011	2012	2014
Budget financing	64.8	62.7	50.16
Number of workers	788	790	649
Considered statements for 1 worker	6.4	8.1	6.97
Revealed violations for 1 worker	5.69	7.36	8.23
Recommendations, made to stop violations, for 1 worker	1.6	2.7	4.5
Fines paid for 1 worker, thousand UAH	27.9	50.6	40.1

Source: Annual Reports of Antimonopoly Committee of Ukraine, <http://www.amc.gov.ua> (15.09.2015).

During 2014-2015 AMCU held following inquiries:

- Inquiries concerning the concerted actions of the agents in the form of higher prices for medicines. It refers to the validity of higher prices for foreign medicines, the number of which is 80% of the market of medicines in Ukraine.
- Inquiry concerning the creation of a cartel in the furniture industry. The court overturned the penalties (419 mln. UAH), imposed by AMCU because the fine was not fair.

- Inquiry concerning the determination of the fair price on oil and the assessment of actions of economic entities operating on the retail markets of oil products for compliance with the legislation on protection of economic competition as importers of gasoline and diesel fuel, as also to operators that realize petroleum products including liquefied natural gas produced in Ukraine. Today prices set on the Ukrainian fuel stations do not meet international trends of lower prices for oil and oil products. Accordingly, the territorial offices of the Antimonopoly Committee of Ukraine considered over 75 cases about abuse of monopoly (dominant) position on the retail market of petroleum products in 2014. If the violation is proven, the penalty for violators of competition law will be 10% of the turnover of the previous year.

It should be mentioned, that Ukraine is at the crossroads of Europe, in a complex international system of coordinates, is a part of both Central Eastern and South Eastern Europe, and therefore should develop close relations with all countries in these regions. Ukraine recognizes the necessity of harmonization of Ukrainian and European competition law. There are close connections between the AMCU and similar public authorities in the EU. The one way of harmonization of Ukrainian competition policy with European practice is to develop new form of competition policy – competition advocacy.

Competition advocacy refers to “those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition”⁶. Competition advocacy involves organization of communication to pursue the interests not only through government, but through other market structures: political parties, NGOs, business, famous personalities etc⁷.

Competition advocacy refers to those activities of competitive agencies that promote competition. Generally, it is the development of collaboration with other government agencies, as well as raising public awareness about the benefits of competition. In practice competition advocacy complements the function of antimonopoly enforcement in the implementation of competition policy.

The main objectives of the AMC Ukraine in competition advocacy are:

1. improving consumer protection;
2. maintaining a healthy economic competition;
3. strengthening international cooperation in competition.

To do this AMC uses certain tools that are represented in Table 3.

⁶ *Advocacy and Competition policy*. ICN’s Conference, Naples, Italy, 2002. <http://www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf>(15.09.2015).

⁷ A. Belov, *Theory and practice of public relations*, Rostov-on-Don 2005, p. 9.

Table 3. Main Tools of Competition Advocacy

№	Objectives of competition policy	Tools of Competition Advocacy
1	Improving consumer protection	<ul style="list-style-type: none"> – organizing educational company for market participants with low level of knowledge about competition law; – publishing annual reports on the competition agency activities; – conducting research on the most important markets development and publishing reports; – cooperation with authorities on the development, coordination and harmonization of legal and regulatory acts; – advising the authorities on the harmonization of regulatory policy with competition policy.
2	Maintaining a healthy economic competition	<ul style="list-style-type: none"> – legislative activity; – taking action against anticompetitive mergers and practices that may cause significant competition environment injury; – challenging decisions, restricting competition, in court; – encouraging the development of various industries; – organization of public forums for discussion on competition for specialized and non-specialized audiences.
3	Strengthening international cooperation in competition	<ul style="list-style-type: none"> – development of bilateral and multilateral cooperation between national competition authorities, including Poland; – learning and knowledge sharing staff competition authorities, technical assistance; – participation in international forums, conferences, committees, commissions and organizations that provide a platform for interaction between national competition authorities; – development and implementation of international projects in competition; – receiving information on best competitive practice from International organizations; – participation in international debates and discussions on issues that may have an impact on competition policy and enforcement;

		– harmonization of Ukrainian competition legislation and business rules with international practice.
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Moreover, a set of competition advocacy tools may vary depending on the primary target group for the purpose of improving the efficiency of these measures. Let's consider the competition advocacy tools that AMC uses for the main target groups.

Cooperation of Antimonopoly Committee with all government agencies and local government is the key to successful implementation of competition policy and the development of an effective competitive environment in Ukraine. According to Article 20 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine» Committee interacts with the government, local government, bodies of administrative and economic management and control in the development of competition, both at national and regional levels, using either instruments of persuasion and explanation, or instruments of enforcement. At the state level, Committee collaborates with various government ministries and agencies, in particular with the Ministry of Economic Development and Trade, the National Commission for State Regulation of Financial Services Markets, State Fiscal Service of Ukraine, and so on.

The main forms of cooperation of Antimonopoly Committee with all government agencies and local government are developing joint plans and programs concerning measures of control over observance of legislation and competition; preparation of joint regulations; participation in working groups; conducting joint meetings, conferences and seminars; exchange of information, mutual consultation, mutual engagement specialists to perform certain tasks. Measures to improving competition policy that AMCU applies mainly to the authorities, are made in form of analysis of normative legal acts of the government in terms of their compliance with antitrust laws, harmonization Bills drafted by the government, development of proposals and comments (Table 4).

Table 4. Interaction of Antimonopoly Committee of Ukraine with the Government and Local Authorities in 2014

Indicators	2014
Number of processed decisions and draft decisions:	1598
Number of failures in agreeing decisions and draft regulations:	344
Number of submitted comments and proposals to bring the draft legal acts in compliance with the requirements of legislation on protection of economic competition:	461

Source: Annual Reports of Antimonopoly Committee of Ukraine, <http://www.amc.gov.ua> (17.09.2015).

The traditional form of coordination of activities of the Committee with state and local authorities is participating experts of the Committee in the inter-agency bodies whose competence includes various issues of economic reform. During the 2014, Committee coordinated its activity with 1582 government and local government agencies, and agencies of administrative management and control. The bodies of the Committee held 6958 measures to the exchange of information with government agencies, prepared seven joint decrees and realized 1495 other events. Experts of the Committee participated in 94 inter-departmental commissions and held 1736 measures to coordinate their activities with law enforcement. Committee conducted 25 joint inspections of monopolies with other public authorities, local government, and agencies of administrative management and control, in the results of which 66 violations of legislation on protection of economic competition were found. An important aspect of competition advocacy is the interaction of representatives of the Committee at Courts.

Practice shows, that the active promotion of the principles of fair competition and competitive behavior in business is an effective tool for the development of competitive relations in the country. As a result, increased knowledge of business on competition enhances understanding and support of concepts for the protection of competition in society.

The Committee holds system of advocate measures in competition among individual entrepreneurs and with their unions and associations. Such activities can reach a wider audience while minimizing the costs you per one economic agent. An example of this successful experience is cooperation of the Committee with the Ukrainian Union of Industrialists and Entrepreneurs. The plan of joint measures in the field of competition policy, which involved joint work in improving the legal framework of competition policy, improving its procedural mechanisms, publishing, learning and explanation of the law for entrepreneurs, was designed.

While working with entrepreneurs Committee introduced a permanent monitoring of the situation on the commodity markets, which have a significant impact on the socio-economic situation in the country, particularly in the markets of bread and bakery products, markets of petroleum products, etc. Based on the research Antimonopoly Committee regularly publishes analytical reports on the situation in food markets that are sent to the President of Ukraine and the government.

The general trend is an increase in level of confidence in the Antimonopoly Committee of market participants (entrepreneurs). In 2014, the Committee received and reviewed the 4525 statements and representations concerning violations of the law on protection of economic competition from businesses and individuals. After reviewing these statements, Committee commenced 196 cases of violations.

According to the results of these checks AMC starts review of cases of violation of the legislation on protection of economic competition and provides

recommendations for preventing action (or inaction) that contain features such as offenses. In order to prevent violations of the law on protection of economic competition Antimonopoly Committee of Ukraine widely uses such tool of competition advocacy as providing recommendations to market participants.

A popular tool of competition advocacy is the organization roundtables and seminars by the Committee. Most often they are held for staff of the Committee with the participation of stakeholders, target groups of competition advocacy to review and discuss issues in the field of competition policy. They also bring together representatives of authorities and business entities of commodity markets to provide explanations for the legislation on protection of economic competition, and recommendations for its implementation and establish of feedback.

Two departments of AMC organized work of telephone "hot line", which was available once or twice a month. However, the effectiveness of this tool of competition advocacy is low because appeals from citizens are virtually absent. However, during direct telephone lines in newspapers and on radio, video- and Internet-conferences Committee makes two-way dialogue with the public and provide answers to the key questions from citizens about its activities.

For competition advocacy among citizens and public Committee uses such tools as publishing articles in the print media and organizing interviews to the electronic media (radio, TV, online edition). Through publication in the media Committee has an opportunity to clarify the legislation and explain how companies should behave in a market, where and how to get help if citizens' rights are violated. In addition, publications in mass media often became the pretext for the start of antitrust investigations.

One of the key instruments of competition advocacy is the official website of AMC and websites AMC's territorial divisions. The Committee regularly publishes decision on granting permission for concerted actions and concentration of undertakings and decisions on infringement of the competition on the official site to ensure transparency of the AMC's activity. AMC also began to publish the decision, which he takes as the appeal body for public procurement.

A positive step in the field of competition is increase of transparency of the Antimonopoly Committee in 2014-2015 by providing access to public information. During 2014 there were granted 728 requests for such information is received by the central office and regional offices of the Committee. 728 requests for such information received by the central office and regional offices of the Committee were satisfied during the 2014. The Public Council of Antimonopoly Committee of Ukraine has been working since 2011. Its membership includes representatives of 50 civil society institutions operating in the relevant working bodies – committees, like regulatory, legal, on financial markets, on industry, on the non-production sphere, on natural monopolies and on unfair competition.

In 2014, there were prepared and published 2,000 news reports about the decisions and activities of the Committee on the official website of the Committee.

The Committee actively interacts with international competitive organizations and competition authorities of other countries in competition advocacy. On the one hand, the Antimonopoly Committee interacts with the specialized international organizations, such as: the Organization for Economic Cooperation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), International Competition Network (ICN), and, on the other hand, cooperates with competition agencies of other countries (Armenia, Azerbaijan, Georgia, Austria, Belarus, Bulgaria, Latvia, Lithuania, Poland, Slovakia, Hungary and the Czech Republic). Implementation of these agreements is by exchange of research findings and information on the development of legislation, experience of interaction with industry regulators, the results of investigations on socially important markets.

It is necessary to stress here the importance of AMC's participation in conferences, seminars and workshops, which are usually devoted to the fight against infringements of competition law and competition advocacy. During such events AMC presents the experience of Ukraine in the conduct of competition policy and operations for the protection of competition in product markets. As a result, the exchange of experiences and adopting best practices in the competition policy, including effective search of solving common problems, are realized. Unfortunately, in Ukraine such events are rare, which reduces the possibility of introduction of foreign colleagues and the public on progress and achievements of the Antimonopoly Committee of Ukraine.

Like any other direction of competition policy, competition advocacy requires appropriate evaluation to determine the effectiveness of various measures and further develop tools and strategies. Providing competition advocacy evaluation can be useful to estimate competition advocacy activities in order to assist the prioritization of future advocacy activities and improve how competition advocacy is conducted within the agency; demonstrate that the agency has met its objectives cost-effectively; and highlight the value of competition advocacy interventions.

As mentioned above, the results of the competition advocacy are to neutralize losses from monopoly and receive additional prizes from competition. To ensure competition advocacy effectiveness, competition agency should first identify fields that need intervention. These fields must be socially important and meaningful. Competition authority must carry out those actions for which it has a reasonable assurance of success.

AMC provides evaluation of the effectiveness of competition advocacy by the qualitative quantitative methods. Qualitative methods include surveys and interviews, statements or estimates of independent experts, binary evaluating the success of competition advocacy measures ("useful"/"useless"), evaluation of the achievement of a competition agency goals.

The quantitative indicators for measuring the competition advocacy effectiveness include: the percentage of the population (or legislature or judiciary) who are aware of the role of the competition authority, its outreach activities, and whether they find that the competition authority's "message" compelling; the percentage of respondents who recognized measures competition advocacy "useful"; the percentage of legislative regulations that have approval with competition agencies; the number of initiatives taken in competition advocacy (seminars, conferences, public hearings etc.); the percentage of all cases filed by the competition agency that were successfully resolved through litigation, a settlement, or issuance of a default judgment; customer satisfaction rate with an competition agency consumer education website or microsite; the percentage of proposed administrative Procedure act rulemakings, conducted solely by the competition agency, completed within nine months of receipt of final comments in the final notice of Proposed Rulemaking; the percentage of redress cases in which the competition agency distributes redress money designated for distribution to consumers within six months; the percentage of the competition agency's consumer protection law enforcement actions that target the subject of consumer complaints to the competition agency; frequency of competition advocacy measures coverage in the media and the internet.

Conclusion

Ukraine has chosen integration into European economic, political and legal space as a strategic direction of development. Association with the European Union (EU) is defined as the main priority and strategic goal of Ukraine at the highest state level. This course involves a series of reforms, including competition. Ukraine recognizes the necessity of harmonization of Ukrainian and European competition law. There are close connections between the AMCU and similar public authorities in the EU.

Under conditions of socio-economic instability weighed competition policy allows effectively manage the economy; react quickly and solve acute social and economic contradictions and problems in the market; assess implemented competition policy measures in terms of economic efficiency and expedience; achieve transparency in the work of the Antimonopoly Committee of Ukraine.

Analysis of the Antimonopoly Committee allows to determine the priority areas of competition policy in order to implement Eurointegration strategy:

- deep structural changes in the competitive sector are necessary to ensure sustainable economic growth in Ukraine;
- democratization of public relations and development of civil society require the introduction of competition advocacy;
- harmonization of the national legal framework in competition with European standards;
- improving organizational management component;

- strengthening of bilateral contacts with the competition agencies of the EU, particularly from Poland, Germany;
- deepening cooperation, coordination of the fight with violators of competition law, organized crime and money laundering.

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