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Directorate for Financial and Enterprise Affairs  
**COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in Ukraine

-- 2020 --

The report is submitted by Ukraine to the Competition Committee FOR INFORMATION.

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## *Ukraine*

### 1. Executive Summary

1. In 2020, we continued our work on building up a new, modern, professional and transparent Antimonopoly Committee of Ukraine (hereinafter referred to as the AMCU).
2. The economic impact of the AMCU's activities in 2020 is estimated as UAH 4,63 billion (over USD 171,74 million), which is more than 7% compared to 2019. This indicator evaluates its effect on public welfare through renewal of competition conditions or prevention of anticompetitive effects.
3. In 2020, the AMCU both independently and in cooperation with law enforcement authorities ceased 877 anticompetitive concerted actions-type violations. Most notably, they include case about anticompetitive actions in the market of medical supplies for the treatment of diabetes, growth retardation and hemophilia conducted by the pharmaceutical group Novo Nordisk represented by Novo Nordisk A/S (Denmark) and Novo Nordisk Health Care AG (Switzerland) and their distributors. in Ukraine (over UAH 188.13 million / USD 6.98 million of aggregate fines imposed), as well as a bid rigging case in public procurement procedure for the selection of a contractor for the construction of facilities at the Chernobyl Nuclear Power Plant and Centralized Storage of Spent Nuclear Fuel with total fine amounted to UAH 116.65 million (over USD 4.33 million).
4. In 2020, 227 violations involving abuse of dominance and 162 violations of anticompetitive actions of the public authorities were ceased.
5. A number of significant unfair competition cases were investigated. In particular relating to case of spreading misleading information by producers of sweet cream butter and hard cheese (a fine of UAH 141.26 million / USD 5.24 million imposed). Also, as part of the AMCU's timely response to socially important issues in the context of the SARS-CoV-2 coronavirus pandemic and the growing demand for anti-microbial products as one of the main means of protecting the population from infections, antiseptic manufacturers are advised to stop disseminating inaccurate and incomplete information about their products.
6. In the area of merger control, the number of applications received by the AMCU is 602, which is for 13% more than in 2019 (532 applications).
7. Public Procurements: continued increase in the number of complaints (by over 13% compared to 2019); legislative framework is updated; telecommunication systems are applied for the process of handling complaints.
8. Since 02.08.2017 (the date of entry into full force of the Law of Ukraine "On State Aid to Economic Entities") the AMCU exercises powers conferred upon it by the national legislation in a field of state aid monitoring and control, in particular by taking decisions on compatibility of state aid for competition; on the termination and return of non-compatible state aid.
9. The AMCU has been actively involved in legislative work, important legislative initiatives aimed at strengthening the Committees' mandate (in particular, according to the OECD Peer Review recommendations), and at ensuring fairness and predictability of the AMCU interactions with business. The AMCU has also worked on secondary legislation.

10. During the year, in order to strengthen competition advocacy, including in the context of the COVID-19 pandemic, 2,091 recommendations were provided on measures aimed at developing entrepreneurship and competition, which is for 52% more than in the previous year.

11. The reforming process of the AMCU's bodies system took place in the form of optimization of the structure of regional offices, the number of which was reduced to 6 interregional offices.

12. The 2020 AMCU activities in brief:

- UAH 251,62 million (over USD 9,33 million) of budget financing;
- UAH 1,63 billion (over USD 60,46 million) of fines imposed;
- UAH 2,86 billion (over USD 106,08 million) of fines and penalties paid;
- UAH 4,63 billion (over USD 171,74 million) of economic impact;
- 1,624 competition infringements ceased;
- 12,675 public procurement complaints filed for total amount of UAH 501,1 billion (over USD 18,59 billion);
- 407 state aid notifications filed;
- 893 draft regulations reviewed.

## 2. Amendments to competition legislation and policy, proposed or adopted

### 2.1. Amendments to the competition laws developed in 2020:

13. New revision of the Law of Ukraine «On State Aid to Business Entities».

### 2.2. Amendments to the competition laws proposed in 2020:

14. During 2020, the AMCU took active part in the working group to finalize the draft law No. 2730 "On Amendments to Certain Legislative Acts of Ukraine on Protection of Economic Competition", the adoption of which will ensure the implementation of the first stage of systemic reform of Ukraine's legislation on economic competition. Based on the results of the work, the AMCU presented a revised draft № 2730 at the profiled Committee of the Verkhovna Rada of Ukraine (The Parliament of Ukraine) on Economic Development. The aim of this project is to strengthen the powers of the AMCU and to approximate Ukrainian competition legislation to the EU *acquis communautaire*;

15. Draft Law on Amendments to the Law of Ukraine "On the Antimonopoly Committee of Ukraine" and some other legislative acts of Ukraine on improving the system of bodies of the Antimonopoly Committee of Ukraine;

16. Draft Law on Amendments to the Law of Ukraine "On Public Procurement" on avoidance of abuse of customers in disclosure of information and on the rights of procurement procedure participants;

17. Draft Law on Amendments to the Law of Ukraine "On Public Procurement" and certain legislative acts of Ukraine to strengthen control and responsibility for violations of legislation in the field of public procurement, ensuring proper protection of the rights of procurement procedure participants.

### 2.3. Draft acts of the Cabinet of Ministers of Ukraine, developed in 2020:

- Eligibility criteria for state aid for temporary measures aimed at supporting the economy in the context of coronavirus COVID-19;
- Eligibility criteria for state aid in the field of environmental protection;
- Eligibility criteria for state aid in the coal industry.

### 2.4. Secondary legislation proposed in 2020:

- Draft methodology for calculating the Competitive Environment Monitoring Index;
- Draft order "On approval of the procedure for participation of the subject of the complaint and the customer in the consideration of the complaint through the use of telecommunications systems in real-time interactive mode."

### 2.5. Secondary legislation adopted in 2020:

- Recommendatory explanations on "Approaches to the application of part three of Article 46 of the Law of Ukraine "On Protection of Economic Competition";
- Methodical recommendations on the application of the hypothetical monopolist test in markets` determining;

### 2.6. The AMCU`s approval of regulatory acts in 2020:

- 893 draft regulations were reviewed;
- 182 draft regulations were not approved due to their anticompetitive effects;
- 84 draft regulations were approved with reservations and recommendations.

18. In order to adopt important draft laws in the process of implementation of competition and antitrust reform in 2020, the AMCU actively cooperated with members of the Verkhovna Rada of Ukraine (The Parliament of Ukraine), experts of the EU Twinning Project "Support to the Antimonopoly Committee of Ukraine in further approximation of legal, procedural and case enforcement practices with EU antitrust and merger control practices" and US experts of the USAID/FTC project "Competitive Markets".

## 3. Enforcement of competition law and policy

### 3.1. Actions against anticompetitive practices, including anticompetitive concerted actions, abuse of dominance and unfair competition

19. In 2020, the AMCU considered 3,683 applications and appeals relating to violations of the legislation on protection of economic competition.

20. Due to the AMCU's engagement, 1,624 competition violations were ceased, including:

- 877 (54%) anticompetitive concerted practices of economic entities;
- 227 (14%) abuse of dominance-type violations;

- 162 (10%) anticompetitive actions of public authorities (state and municipal authorities, bodies of administrative and economic management and control);
- 163 (10%) violations related to submission of information upon AMCU request;
- 147 (9%) unfair competition-related violations;
- 47 (3%) mergers without permission;
- 1 other violation.

21. 79% were ceased by the AMCU's decisions; 21% - by providing the AMCU's recommendations.

**Table 1. Structure of ceased violations in 2020 by sector and type, %**

Market	Anticompetitive actions of economic entities	Abuse of dominance	Anticompetitive actions of public authorities	Unfair competition	Total
Construction and construction materials	23,8 %	20,7 %	6,8 %	0,7 %	18,7 %
Fuel and energy complex, housing and utilities	16,0 %	31,3 %	14,2 %	0,7 %	16,4 %
Agro-industrial complex	16,0 %	0,0 %	0,0 %	50,3 %	14,7 %
Transportation	9,4 %	5,3 %	4,9 %	4,1 %	8,9 %
Healthcare, pharmaceuticals and medical products	3,0 %	24,2 %	6,8 %	12,2 %	6,9 %
Services of land management, real estate services	0,0 %	8,4 %	23,5 %	0,0 %	4,2 %
Waste removal and recycling	0,0 %	5,3 %	22,8 %	0,0 %	3,1 %
Communications and telecommunications	1,7 %	3,1 %	1,2 %	8,2 %	2,7 %
Finance and insurance	0,1 %	0,0 %	0,0 %	2,7 %	2,1 %
Industrial sphere	1,3 %	0,0 %	0,0 %	6,1 %	1,5 %
Funeral services	0,2 %	0,0 %	3,7 %	1,4 %	0,6 %
Other markets	28,5 %	1,7 %	16,1 %	13,6 %	20,2 %
Total	100 %	100 %	100 %	100 %	100 %

22. The total amount of the fine is UAH 1,63 billion (over USD 60,67 million).

**Figure 1. Fines Imposed by the AMCU in 2019-2020, USD million**

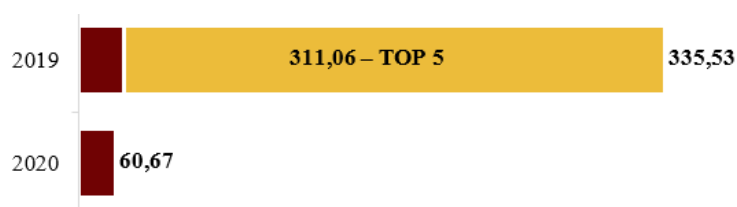
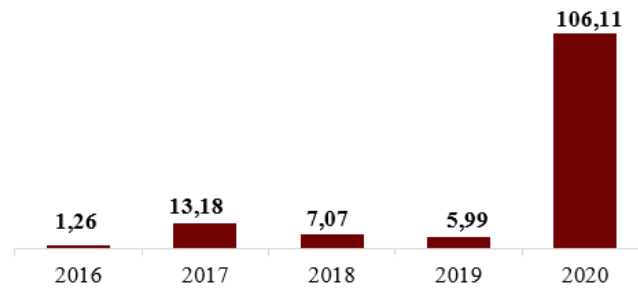
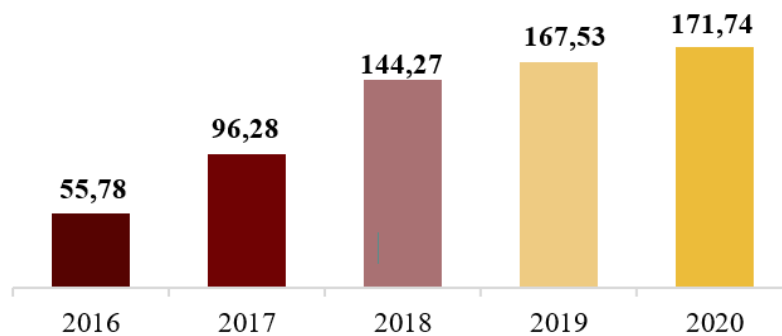


Figure 2. Fines paid in 2016-2020, USD million



23. Amount of the economic impact in 2020 is estimated as UAH 4,63 billion (over USD 171,74 million), which is more than 7% compared to 2019 (4,33 billion UAH/over USD 167,53 million), as a result of the AMCU's measures aimed at terminating competition-related violations.

Figure 3. Economic Impact in 2016-2020, USD million



24. In 2020, the AMCU initiated 324 court cases to enforce payment of fines imposed for competition-related infringements. In 291 cases, courts upheld the AMCU's claims.

25. In 2020, 283 AMCU's decisions in competition violation cases were challenged in courts. 20 decisions were annulled in whole or in part.

### 3.1.1. Anticompetitive actions of public authorities

26. In 2020, many of ceased violations (162) were anticompetitive actions of public authorities, thereof:

**Table 2. Anticompetitive actions of public authorities in 2020**

98	31	15	11
Actions or inactivity which resulted or can result in distortion of competition (Part 1, Article 15 of the Law of Ukraine "On Protection of Economic Competition")	Inducement / creation condition for violation (Article 17 of the Law of Ukraine "On Protection of Economic Competition")	Granting advantages that put other market participants in a privileged position (paragraph 7, Part 2, Article 15 of the Law of Ukraine "On Protection of Economic Competition")	Creation of unfavorable or discriminatory conditions of activities (paragraph 8, Part 2, Article 15 of the Law of Ukraine "On Protection of Economic Competition")

*Case example #1 - AMCU's Recommendations No. 48-рк dated 05.11.2020:*

27. Starting from October 2020, new requirements for banks whose bank guarantees are accepted as appropriate by the Gas Transport System Operator (hereinafter - GTS Operator) came into force. Thus, the National Commission for State Energy and Public Utilities Regulation (NEURC) amended the GTS Operator Code, which stipulates that the GTS Operator shall not accept financial security in the form of a bank guarantee issued by a bank that is not included by the National Bank of Ukraine into the list of systemically important banks.

28. In order to stop actions that contain signs of violation of the legislation on protection of economic competition, and to eliminate the causes of this violation and the conditions conducive to it, the AMCU issued binding recommendations to the NEURC to bring the provisions of the Gas Transportation System Code in terms of requirements for financial security for fulfilling the obligations of the customer of services for transportation of gas in accordance with the requirements of the legislation on the protection of economic competition by preventing:

- granting benefits or other advantages to economic entities or groups of economic entities that place them in a privileged position over competitors, which leads or may lead to the prevention, elimination, restriction or distortion of competition;
- creation of unfavorable or discriminatory conditions for activities of certain economic entities or groups of economic entities in comparison with competitors.

*Case example #2 - AMCU's Decision No. 834-p as of 29.12.2020:*

29. During 2017-2018, Kharkiv Regional Council studied the demand for the leased object to accommodate a pharmacy with certain conditions, determined by the relevant decisions and orders, to applicants for participation in the tender for the lease of communal property. At the same time, on December 11, 2018, the tender was held under other, additional conditions (availability of a license to carry out economic activities for the sale of narcotic drugs, psychotropic substances and precursors), which led to a narrowing of range of potential bidders for the lease of communal property for placement of a pharmacy, because out of five participants of the tender only one economic entity met the additional requirements of the tender, and became the winner (as of the deadline for submission of documents for the tender, 05.12.2018, received the appropriate license).

30. The AMCU decided to take measures to eliminate the consequences that arose as a result of the Kharkiv Regional Council's violation of the legislation on protection of economic competition, provided for in Part 1 of Art. 15 and paragraph 3 of Art. 50 of the Law of Ukraine "On protection of economic competition", during the tender for the lease of communal property, by holding a tender (s) for the right to enter into a lease agreement



for the said premises in compliance with the legislation on protection of economic competition.

### 3.1.2. Anticompetitive concerted practices

31. In 2020 the AMCU ceased 877 above-mentioned violations, thereof:

**Table 3. Anticompetitive concerted practices in 2020**

847	21	5	2
Distortion of results of bids, auctions, tenders (Clause 4, Part 2, Article 6 of the Law of Ukraine "On Protection of Economic Competition")	Setting prices or other conditions for the purchase or sale of goods (Clause 1, Part 2, Article 6 of the Law of Ukraine "On Protection of Economic Competition")	Similar actions (omissions) which resulted or can result in distortion of competition (Part 3, Article 6 of the Law of Ukraine "On Protection of Economic Competition")	Removal from the market or restriction of access to the market (exit from the market) of other business entities, buyers, sellers (Clause 5, Part 2, Article 6 of the Law of Ukraine "On Protection of Economic Competition")

#### *Case example #1 - AMCU's Decision No. 5-p/mк as of 27.07.2020:*

62. BK Ukrbudmontazh LLC and Ukrenergomontazh PJSC committed violations in the form of anti-competitive concerted actions related to distortion of bidding results during participation in procurement procedures, namely: construction works on the object "Construction of SNF-1 radiation monitoring system SSE "Chornobyl NPP"; "Construction work on the object" Chernobyl NPP. Liquid radioactive waste processing plant "; "Construction works on the object" Construction of a complex of engineering and technical means of physical protection system during transportation of spent nuclear fuel from SNFSF-1 to SNFSF-2 on ChNPP SSE ", which was carried out by SSE" Chornobyl NPP "; "Construction of the Centralized Storage of Spent Nuclear Fuel of WWER Reactors of Ukraine", carried out by the State Enterprise "National Atomic Energy Generating Company" Energoatom ".

63. Total fine imposed – UAH 116,65 million (over USD 4,33 million).

#### *Case example #2 - AMCU's Decision No. 420-p as of 02.07.2020:*

64. The AMCU recognized the actions of GRUNDFOS UKRAINE LLC, GEYSER LLC, LEON-SERVICE PLUS LLC, VIKOM LLC, ROMSTAL UKRAINE LLC, KLIMAT TECHNOLOGIES LLC, YUNIK TIEN XXI LLC COMPANY ", LLC " NGO "ECOSOFT", LLC "ASTER-M", LLC "PROPEX", LLC "SNAB-RESERVE GROUP" which consisted in concluding supply contracts, the provisions of which contained conditions for setting minimum prices for further sale of household goods, as violations in the form of anti-competitive concerted actions relating to price setting.

65. Total fine imposed – UAH 5,19 million (over USD 192,608).

### 3.1.3. Abuse of dominance

34. In 2020 AMCU ceased 227 above-mentioned violations, thereof:

Table 4. Abuse of dominance in 2020

130	89	3
Setting prices / conditions for the purchase or the sale, which could not be established under conditions of significant competition in the market (clause 1, Part 2, Article 13 of the Law of Ukraine "On Protection of Economic Competition")	Actions or inactions of market participants having a dominant position in the market that led or may lead to prevention, elimination or restriction of competition or impairment of interests of other entities or consumers (Part 1, Article 13 of the Law of Ukraine "On Protection of Economic Competition")	Other violations

*Case example #1. - AMCU's Decision No. 810-p as of 24.12.2020:*

66. The defendant: group of 18 Gas Distribution Network Operators (hereinafter – GDN Operator). Regional gas companies, which are part of the GDN Operator Group, in the period from November 2016 to July 2018 nominated for the economic entities the participating in public procurement of household gas meters' additional unreasonable requirements for the mandatory presence of a test report with positive conclusions on the RM 081/39.434- 2014

67. RM 081/39.434-2014 is a program of research of gas meters in real operating conditions, developed at the request of JSC "Dniprogaz" by representatives of SE "Ukrmetrteststandard". Program RM 081/39.434-2014: is not a mandatory document in accordance with the legislation of Ukraine; developed exclusively for voluntary use in order to prepare recommendations on the specifics of operation of standard gas meters to organizations operating them, and can be used to develop recommendations for meter manufacturers in terms of refining or optimizing their technical (operational) and metrological characteristics; according to the results of research in accordance with the Program, only conclusions on changes in the metrological characteristics of meters are provided; does not contain criteria for qualitative assessment of such changes (positive and / or negative).

68. During the consideration of the case it was found that JSC "Kharkivmiskgaz" (one of the GDN Operators) in accordance with the Testing Program 081/39.434-2014 in the period from December 2014 to December 2015 at its own test site conducted tests of SAMGAZ and GALLUS gas meters and made the appropriate protocol. In the future, during the procurement procedures for household gas meters at the ProZorro electronic platform, the GDN Group gave preference to SAMGAZ and GALLUS meters, which were tested under this Program.

69. The Committee acknowledged that the GDN Operator Group held a monopoly (dominant) position in the market for natural gas distribution services within the territories of its licensed activities. And its actions are a violation, in the form of abuse of monopoly (dominant) position by making additional unreasonable requirements for the purchase of natural gas meters, which led to infringement of the interests of economic entities, whose meters did not meet these requirements, and artificially created non-competitive advantages for the production of SAMGAZ and GALLUS meters in comparison with meters of other manufacturers.

70. Total fine imposed – UAH 381,23 million (over USD 14,14 million).

*Case example #2 - AMCU's Decisions No. 780-p as of 15.12.2020:*

71. During July-October 2019, JSC DTEK Zakhidenergo reduced the volumes of electricity offered in the bids for the sale of electricity at day-ahead market from July 29, 2019 during the hours of minimum load in the Burshtyn TPP Island trade zone, which leads to an increase in the volume of JSC DTEK Zahidenergo "services for the sale of electricity on the balancing market at higher prices and, accordingly, to additional costs of other economic entities or electricity consumers, which is a violation in the form of abuse of monopoly (dominant) actions that lead to infringement interests of other business entities, which would be impossible in the presence of significant competition in the market.

72. Also, the actions of DTEK Zahidenergo JSC during July-October 2019 on the day-ahead market during peak hours in the Burshtyn TPP Island trade zone regarding the establishment of inflated and economically unreasonable prices in bids for electricity sales at day-ahead market in the form of abuse of monopoly (dominant) position by setting prices that could not be set in the presence of significant competition in the market.

73. D.Trading LLC during the daily auctions for bandwidth allocation in the direction Slovakia - Ukraine, committed actions which were aimed at restricting the access of imported electricity from the territory of Slovakia to the trade zone "Island of Burshtyn TPP", through redemption and non-use of most of the allocated bandwidth during July-October 2019, which led to a decrease in the share of imported electricity and expansion of the share of electricity generation of JSC DTEK Zahidenergo in the trade zone "Island of Burshtyn TPP", as a result of which D. Trading LLC benefited from violation of the legislation on protection of economic competition by JSC DTEK Zahidenergo by obtaining additional income from D.Trading LLC.

74. Total fine imposed – UAH 275,23 million (over USD 10,21 million).

**3.1.4. Unfair competition**

75. In 2020 the AMCU ceased 147 above-mentioned violations, thereof:

**Table 5. Unfair competition in 2020**

126	13	6	1	1
Dissemination of misleading information (Article 15 <sup>1</sup> of the Law of Ukraine "On Protection against Unfair Competition")	Unlawful use of trademarks (Article 4 of the Law of Ukraine "On Protection against Unfair Competition")	Achievement of undue advantage in competition (Article 15 of the Law of Ukraine "On Protection against Unfair Competition")	Discrediting of economic entity (Article 8 of the Law of Ukraine "On Protection against Unfair Competition")	Commitment of actions that contradict trade and other honest customs in economic activity (Article 1 of the Law of Ukraine "On Protection against Unfair Competition")

*Case example #1 - AMCU's Decision No. 31-p/mk dated 13.10.2020:*

76. Based on the results of the AMCU's case review, a decision was made by which the actions of Volyngaz Zbut LLC were recognized as a violation under Art. 15<sup>1</sup> of the Law of Ukraine "On protection against unfair competition", in the form of dissemination of misleading information.

77. Volyngaz Zbut LLC reported to an indefinite number of people by informational messages false information about its own conditions for the sale of natural gas as fuel through local pipelines in the Volyn region. This applies to the statement that Volyngaz Zbut LLC always indicates the real price of gas and that this economic entity has no cases (practices) when, after concluding a contract with it, additional agreements are concluded

for gas supply at higher prices than offered in the proposals (in order to win the tenders, the offered price of the offer (unlike other market participants) is not deliberately underestimated, as well as information on the percentage of purchases in which Volyngaz Zbut LLC is recognized as the winner (97% and 93% and / or more than 90%). from the beginning of the year to September 26, 2018 inclusive.) The chosen method of presenting information may affect the intentions of individuals to purchase the goods of this entity and lead to illegal advantages in competition.

78. Fine imposed – UAH 55,18 million (over USD 2,05 million).

*Case example #2 - AMCU's Decision No. 430-p dated 10.07.2020:*

79. The actions of «NVK «Ecopharm» LLC were recognized as a violation under Art. 15<sup>1</sup> of the Law of Ukraine "On protection against unfair competition", in the form of reporting false information on websites <https://ecopharm.ua/> and <https://proteflazid.com.ua/> on the drug "Proteflazid", table of contents concerning the treatment and/or prevention of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2. Information was published without proper justification in accordance with applicable law, in particular without official recommendations of the Ministry of Health of Ukraine on its use for the treatment and/or prevention of COVID -19 disease.

80. Fine imposed – UAH 3,21 million (over USD 119,082).

### 3.2. Mergers and acquisitions

81. Among mergers authorized by the AMCU, share of permits on the industrial markets is the biggest (about 20 % of total amount of permits granted) as well as agricultural market share (about 18 %) and transportation (about 14 %).

82. Types of economic entities' mergers authorized by the AMCU in 2020 are:

- 72,5 % acquisition of stocks and shares;
- 16,1 % acquisition of control in other forms;
- 2.7 % joint establishment of an economic entity;

83. In 2020:

- 70 applications for granting permission for concerted actions were considered;
- 63 permits for concerted actions were granted;
- 602 applications on mergers of economic entities were considered;
- 223 (over 37 %) applications were submitted by foreign investors or enterprises with the participation of foreign investors; The share of such applications has increased by 3 % compared to 2019;
- 477 permits for mergers were granted.

Figure 4. The Number of Merger Applications Considered in 2016 – 2020

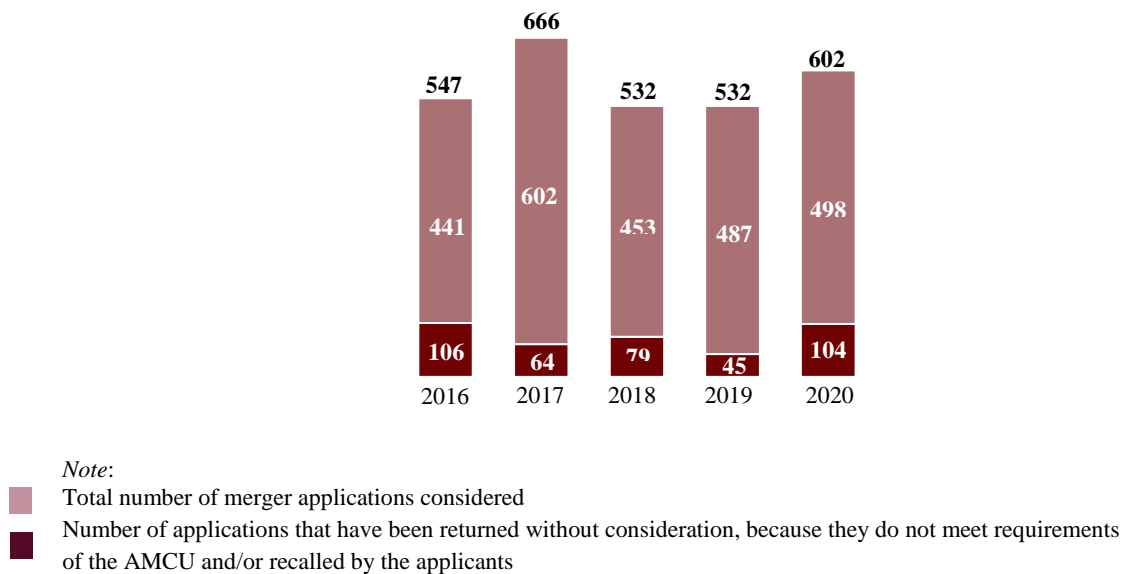
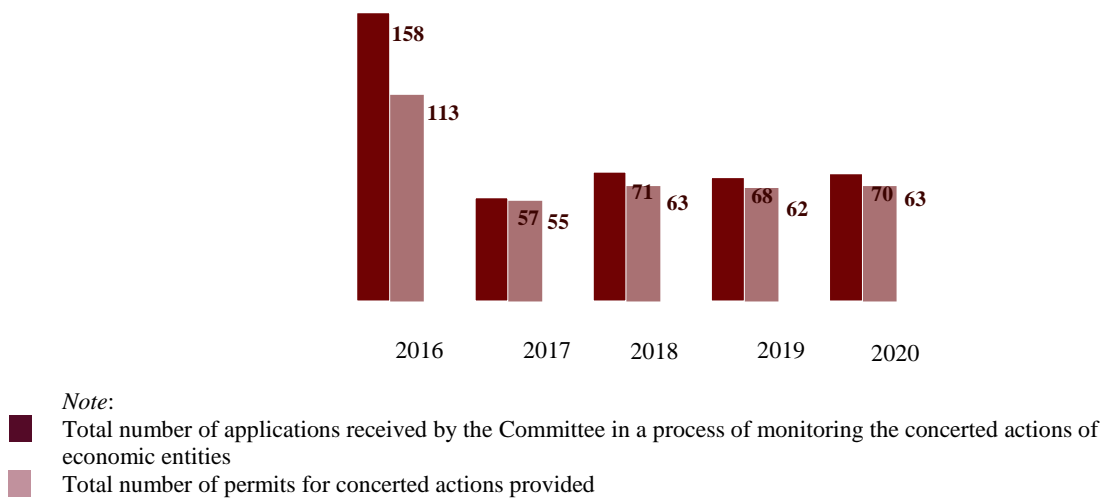


Figure 5. The Number of Applications and Permits for Concerted Actions in 2016 – 2020



### 3.2.1. Case example #1 - AMCU's Decision No. 817-p dated 29.12.2020:

84. Merger Participants:

- «PEUGEOT S.A.»
- «FIAT CHRYSLER AUTOMOBILES N.V.»

85. Market: sales of cars of M-Segment.

86. In order to mitigate the possible negative impact of the concentration on competition in the car market in the M-Segment in Ukraine, Peugeot S.A. and "Fiat Chrysler Automobiles N.V." and business entities related to them by control relations, for four years should:

- follow the plans of stopping the supply of new models of cars of M-Segment to Ukraine;
- follow the plans of «Fiat Chrysler Automobiles N.V.» on the termination of supply to the territory of Ukraine of cars of M-Segment after 2023;
- not to apply different conditions in equivalent agreements with distributors for the purchase and sale of cars of M-Segment in Ukraine without objectively justified reasons;
- not to allow the application of different conditions in equivalent agreements between distributors and dealers for the sale of M-Segment cars in Ukraine without objectively justified reasons;
- not include in the agreements with distributors on the sale of cars of M-Segment in Ukraine a provision prohibiting cooperation with other car manufacturers;
- not include in the agreements between distributors and dealers on the sale of M-Segment cars in Ukraine a provision prohibiting dealers from cooperating with other distributors;
- not to set and not to recommend the establishment of retail prices for the sale of cars of M-Segment in Ukraine to business entities not related to the relationship of control with the parties to the concentration at the time of the concentration;
- The definition of "M-Segment cars" refers to minivans with 6 to 8 passenger seats. The body of such vehicles has a larger volume than that of light vehicles or hatchbacks.
- Concentration permit granted in the form of a merger with Peugeot S.A. (Ruey-Malmeson, France) to Fiat Chrysler Automobiles N.V. (London, Great Britain).

### 3.2.2. Case example #2 - AMCU's Decision No. 611-p dated 01.10.2020:

87. Merger Participants:

- METINVEST B.V.
- LLC "INDUSTRIAL COAL HOLDING"

88. Market: coking coal

89. In order to mitigate the potential negative impact on competition in the coking coal market of this merger, "Metinvest B.V." is obliged for three years not to allow unreasonable refusal to sell coking coal concentrate extraction of Private Stock-Joint company "COLLIERY GROUP POKROVS'KE" (Pokrovsk, Donetsk region, Ukraine) to business entities not related to relations of control with the parties at the time of merger, namely: in the presence of inquiries from such entities, expressed including in official letters and/or by e-mail, to ensure the sale of coking coal concentrate produced by PJSC "COLLIERY GROUP POKROVS'KE" in the amount of at least 10% of the total annual sales of coking coal concentrate extraction of PJSC "COLLIERY GROUP POKROVS'KE"; to apply market prices during the sale of coking coal concentrate extraction of PJSC "COLLIERY GROUP POKROVS'KE" to business entities not related to the relationship of control with the parties of the merger.

90. In order to properly inform the AMCU about the status of fulfillment of obligations for appropriate control, Metinvest B.V. is obliged to provide the AMCU within three years, starting from the next year after the merger, once every six months information on the production and supply to the market of coking coal concentrate extraction PJSC

"COLLIERY GROUP POKROVS'KE" in kind and value, indicating consumers and prices of sales.

91. Permission to acquire Metinvest B.V. (The Hague, The Netherlands) shares in the authorized capital of the limited liability company "INDUSTRIAL COAL HOLDING", which provides more than 50% of the votes in the supreme governing body of the company.

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

### 4.1. Competition Advocacy

92. The AMCU's competition advocacy methods:

- providing recommendations and proposals to regulators and public authorities;
- promoting initiatives before the President and the Government of Ukraine on the necessity of amending the current regulatory framework;
- introducing proposals to the Ukrainian Parliament relating to competition policy formation in various spheres of the national economy;
- approval of drafts of normative legal acts and decisions of public authorities and local government that may affect competition;
- providing recommendations to market participants, conducting communication campaigns.
- The AMCU has paid special attention to the analysis of the competition impact of sectoral regulation in such markets:

#### 4.1.1. Electricity Markets

93. Following the introduction of a new liberalized model of the electricity market on July 1<sup>st</sup> 2019, the AMCU continues to pay attention to the observance by its participants of the principle of fair competition. Also, the AMCU carries out systematic work to develop approaches to this issue:

- consideration of drafts of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Prevention of Abuse in Wholesale Energy Markets", which transpose the norms of the adapted version of Regulation 2011/1227/EU and based on the AMCU's comments to the NEURC (National Energy and Utility Regulatory Commission);
- participation in meetings with the Secretariat of the Energy Community and the National Commission for Regulation of Economic Competition on the development of approaches to this issue.

94. Recommendations of the NEURC were also provided to ensure timely publication of the results of monitoring the functioning of the electricity market and its segments.

95. Among other things, recommendations to the NEURC were given, which state that, in accordance with the established procedure NEURC has to develop and submit proposals to the Cabinet of Ministers on the scope and conditions of imposing special obligations on electricity market participants to ensure public interests in the functioning of the electricity market. competition in the day-ahead market, the creation of artificial

imbalances of SE NNEGC "Energoatom" and SE "Guaranteed Buyer" and eliminated the conditions for unfair competition of electricity producers and market traders.

96. In order to prevent the disconnection of critical facilities from energy supply, the AMCU adopted comprehensive recommendations to the Ministry of Energy and Environmental Protection and the Interdepartmental Commission on Protected Consumer Status, as a result of which the Ministry of Energy announced that changes were made for use by market participants (except consumers) to ensure security of electricity supply to protected consumers.

#### ***4.1.2. Oil, Petroleum and Gas Markets***

97. At the end of 2019, the AMCU found that the level of retail prices in Ukraine for high-octane gasoline and diesel fuel does not correlate with changes in the factors influencing their formation. The AMCU provided market participants with recommendations, followed by a reduction of retail prices of the major market participants. At the same time, an in-depth study of the compliance of the actions of oil market participants with the requirements of the legislation on the protection of economic competition was launched. The study revealed a further decline in quotations for oil and petroleum products in European markets and the lack of proportional reflection in the size of prices on the information boards of stationary gas stations. After a set of measures taken by the AMCU, the retail prices at gas stations of the main market participants decreased, namely, during December 2019 - May 2020, retail prices for gasoline and diesel fuel at gas station networks decreased by an average of 24%.

98. Also in order to prevent violations of economic competition law, especially after the opening of the natural gas supply market, the AMCU advised natural gas suppliers to refrain from actions that could prevent, restrict, eliminate or distort competition in the natural gas supply market. In particular, when household consumers change the supplier of natural gas, or when setting prices for natural gas. At the same time, the basis for committing illegal actions by natural gas suppliers may be the imperfection of regulations in the field of natural gas, as well as the lack of effective control over operations occurring on the information platform of the gas transmission system operator when changing natural gas supplier. In this regard, the AMCU also provided recommendations to the NEURC and LLC "Gas Transmission System Operator of Ukraine".

99. In order to advocate for competition in the natural gas markets and law enforcement measures in case of detection of violations of the legislation on protection of economic competition in the actions of economic entities in the natural gas markets, the AMCU takes comprehensive and systematic measures. In particular, the AMCU provided recommendations to 37 sales companies on timely informing household consumers about changes in natural gas prices and setting prices at a level that would exist in the presence of significant competition in the market.

#### ***4.1.3. Housing and Utility Markets***

100. Housing and utility markets continue to be an important area of work of the Antimonopoly Committee of Ukraine. As a result of the work carried out by regional offices of the AMCU, more than 100 violations of the legislation on protection of economic competition in the actions of economic entities and local governments were revealed only in the field of waste management. Most of the identified violations are related to the inaction of local governments in terms of not initiating tender procedure.

101. In order to prevent violations of the legislation on protection of economic competition, the AMCU's bodies have strengthened control in the field of heat supply, in



particular, provided recommendations to change the size of utility bills to consumers for district heating and hot water supply services due to the change in the price of natural gas during the heating period of 2019/2020.

#### **4.1.4. Transport markets**

102. During 2020, the AMCU took a set of measures aimed at preventing violations of antitrust legislation in the field of rail transport by JSC «Ukrzaliznytsia». It is for these measures in 2020 Antimonopoly Committee of Ukraine received the Ukrainian Rail Award 2020, which the market noted the impact of a set of measures of the AMCU in 2020 aimed at developing competition in the freight market and preventing antitrust violations.

#### **4.1.5. Pharmaceutical Markets**

103. In order to monitor the behavior of pharmaceutical market participants in the context of the spread of COVID-19, the AMCU and its regional offices during March-July 2020 carried out:

- daily monitoring of prices for antiviral drugs and personal protective equipment, which consisted of daily recording of their availability and price level in pharmacies in all regions of Ukraine;
- collection of information from regulators (Ministry of Health, State Medical Service), customs authorities, consulting company Morion LLC, direct participants of relevant markets in order to analyze their price behavior at all levels of sales (manufacturer, wholesaler, pharmacy);
- Monitoring of unscrupulous practices in the field of advertising of medical supplies, as a result of which decisions were made and recommendations were provided to business entities involved in the production of medical supplies and their advertising.

104. In 2020, the AMCU issued significant comments on the draft order of the Ministry of Health of Ukraine “On Approval of the Procedure for Selection of Specialized Organizations Procuring Medical supplies and devices by the Ministry of Health of Ukraine” concerning the established evaluation criteria of specialized organizations. The analysis revealed potential risks of possible anti-competitive actions of the Ministry of Health of Ukraine during the selection of specialized organizations for procurement in the field of health care.

#### **4.1.6. Wholesale and retail markets for goods**

105. Due to COVID-19, in 2020 the AMCU's bodies strengthened the monitoring of compliance with the legislation on protection of economic competition by market participants in the retail sale of goods through retail chains. Daily monitoring of prices for major food groups which are included in consumer basket was introduced, according to them, the AMCU promptly responded to the actions of market participants.

106. The AMCU has provided recommendations to participants in the markets and to participants in regional markets who carry out retail sales of food through their own grocery networks for the production and wholesale of food.

## **4.2. The AMCU’s activities as a Public Procurements Appeal Body**

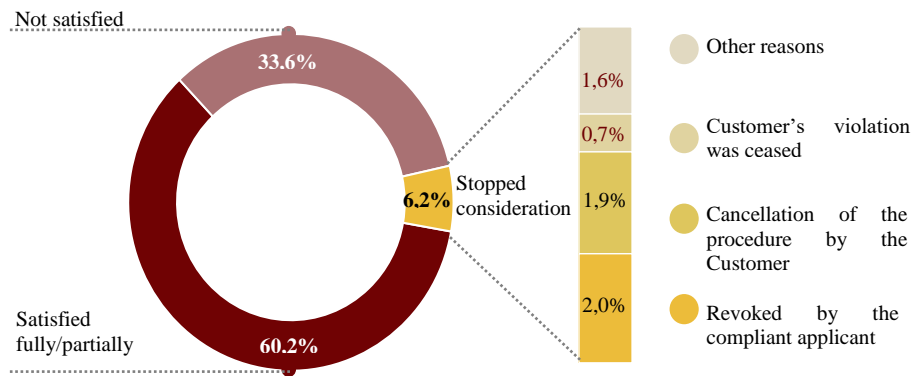
107. In April 2020, the Law of Ukraine of 19 September 2019 N°114-IX took effect “On Amendments to the Law of Ukraine “On Public Procurement” and Certain Other

Legislative Acts of Ukraine on Improving Public Procurement”, amending the current Law, including the appeal. Also, the resolution of the Cabinet of Ministers of Ukraine dated 22.04.2021 N°292 approved the amount and Procedure for payment for filing a complaint to the appellate body through the electronic procurement system and its return to the subject of appeal.

- In 2020, real-time interactive telecommunications systems began to be used during administrative board meetings.
- 11,463 public procurement appeals were received during the year 2020.
- Total financial amount of public procurement appeals considered is UAH 501,1 billion (over USD 18,59 billion).
- Obligations to eliminate the violations during public procurement procedures were imposed in the total financial amount of UAH 250,9 billion (over USD 9,31 billion).
- 24,270 decisions taken.

108. As a result of the analysis of appeals and complaints concerning public procurement (gas, fuel, electricity, as well as food, canteen services and catering services), the AMCU summarized the typical problems that are the basis of complaints and identified regulatory inconsistencies that were prerequisites. in procurement procedures. To address the identified common problems and inconsistencies in regulations, the AMCU provided recommendations to the Ministry of Economy to improve the procurement process.

Figure 6. The structure of complaints considered, 2020



### 4.3. The AMCU’s activities as an Authorized Body on State Aid Monitoring and Control

109. According to Ukrainian legislation, the Antimonopoly Committee of Ukraine is also the Authorized Body on State Aid Monitoring and Control.

110. Since 02.08.2017 (the date of entry into full force of the Law of Ukraine “On State Aid to Economic Entities”) the AMCU exercises powers conferred upon it by the national legislation in a field of state aid monitoring and control, in particular by taking decisions on compatibility or incompatibility of state aid for competition; on the termination and refund of illegally received state aid.

111. 57. The AMCU prepared draft law and secondary legislation aimed to resolve the state aid issues in Ukraine in accordance with requirements of the Association Agreement

between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part the current regulatory framework in this area is still being improved, where the AMCU plays a leading role in initiating development and adoption of the corresponding regulatory acts.

112. During 2020, the AMCU adopted 216<sup>1</sup> decisions, namely:

- 157 – on recognizing state support as not being state aid;
- 74 – recognizing compatibility of state aid for competition;
- 19 – on recognition of new state aid as incompatible with competition.

113. Transparency of the AMCU activities in this area is ensured by open and accessible State Aid Portal, which is situated at the official website of the AMCU and contains information about state aid register, as well as state aid decisions and cases of the AMCU.

114. As an authorized body in charge of state aid to economic entities monitoring and control, the AMCU exercises its powers granted by the Law of Ukraine “On State Aid to Economic Entities”. During 2020 the AMCU:

- received 407 state aid notifications;
- reviewed 193 draft legal acts for their consideration on compliance with the state aid legislation;
- provided over 3,256 consultations to state aid providers;
- 106 clarifications on state aid were provided;
- the amount of returned illegal state aid – UAH 40,2 million/USD 1,49 million

## 5. Resources of the competition authority

115. In 2020, the amount of budget allocations for the exercise of the powers of the AMCU in accordance with the Law of Ukraine "On the State Budget of Ukraine for 2020", as amended, amounted to UAH 251,62 million (USD 9,33 million).

116. The actual number of employees in the AMCU bodies is 582, thereof:

- In regional offices – 278;
- In the central office – 304.

117. Reform of regional offices:

- In 2020, the structure of regional territorial branches (regional bodies of AMCU) was optimized to 6 interregional territorial branches: North, West, South, South-West, South-East and East.
- The expected results from the reorganization of regional offices are the creation of an effective structure (the structure of interregional offices is formed depending on the tasks, priorities and optimal number of employees for their implementation, employees receive appropriate conditions and decent pay), ensuring unified research investigation practice, efficient load distribution, digitalization of internal processes, etc.

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<sup>1</sup> The part of the decisions adopted by the AMCU in the operative part contains several conclusions

## 6. References to new reports and studies on competition policy

118. In 2020 the AMCU studied functioning of markets with competition issues, which resulted in publishing of the corresponding reports (available only in Ukrainian):

119. The practice of application by the AMCU in 2017-2019 of Part 1 of Art. 13 of the Law of Ukraine "On Protection of Economic Competition". Approved by the Antimonopoly Committee of Ukraine on November 19, 2020. <https://amcu.gov.ua/npas/uzagalnennya-praktiki-zastosuvannya-organami-antimonopolnogo-komitetu-ukrayini-v-2017-2019-rokah-chastini-pershoyi-statti-13-zakonu-ukrayini-pro-zahist-ekonomichnoyi-konkurenciyi?v=5fc7742e6fdf4>

120. Report on the results of the banking services market research in the context of violation of the principle of competitive neutrality through the adoption of laws and regulations that give public sector banks exclusive rights to provide banking services in certain segments of the banking services market. Approved by the Antimonopoly Committee of Ukraine on October 22, 2020.

<https://amcu.gov.ua/storage/app/uploads/public/5fa/005/38a/5fa00538a9171513164556.pdf>

121. Report on the detection and termination of anti-competitive practices during quarantine measures introduced through COVID-19. Approved by the Antimonopoly Committee of Ukraine on November 26, 2020.

<https://amcu.gov.ua/storage/app/uploads/public/5fd/0d1/614/5fd0d1614092c326403702.pdf>

122. Report on the results of the market research of glass bottles for medical supplies, infusion and transfusion drugs for single use with segmentation by capacity: 100 cm<sup>3</sup>, 250 cm<sup>3</sup>, 450 cm<sup>3</sup> (for the period 2015 - 2018). Approved by the Antimonopoly Committee of Ukraine on November 20, 2020.

[https://amcu.gov.ua/storage/app/sites/1/uploaded-files/zvit\\_but\\_liku.pdf](https://amcu.gov.ua/storage/app/sites/1/uploaded-files/zvit_but_liku.pdf)

123. Report on the results of a study to identify and stop unfair practices in the field of advertising of drugs, dietary supplements, medical procedures, antiseptics and disinfectants. Approved by the Antimonopoly Committee of Ukraine on December 29, 2020.

<https://amcu.gov.ua/storage/app/uploads/public/5ff/5b9/766/5ff5b97665ff5b976685ac541795869.pdf>

124. Annual report on granting of state aid to economic entities in Ukraine for 2019. Approved by the AMCU on August 28, 2020.

<https://amcu.gov.ua/storage/app/sites/1/uploaded-files/202019.pdf>