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Competition in the Healthcare Sector – Contribution from Ukraine

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More documentation related to this discussion can be found at: oe.cd/chthc.

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1. General overview

1. The pharmaceutical markets remain a constant focus of attention for the Antimonopoly Committee of Ukraine (hereinafter – the AMCU or the Committee).
2. Analysis of the behavior of market leaders, in particular in terms of pricing of medicines at all stages of product promotion, is one of the measures to prevent, detect, and stop violations of the law on the protection of economic competition.
3. This contribution outlines the experience of recent advocacy and law enforcement by the AMCU, interagency cooperation among public authorities and healthcare market participants, and the other stakeholders.
4. In addition, the contribution contains information on the studies conducted by the Committee, as a result of which the case concerning anti-competitive concerted actions of two national distributors of medicines has been completed, and the case concerning the restriction of sales volumes of medicines of three domestic manufacturers by the five largest pharmacy chains has been initiated.

2. AMCU involvement in improving healthcare market regulation

2.1. Cooperation with regulatory authorities, national medicine suppliers, and stakeholders in promoting accessible pharmaceutical markets

5. The issue of ensuring the availability of medicines for all categories of the population of Ukraine this year was considered by the National Security and Defense Council of Ukraine.
6. By the decision of the National Security and Defense Council of Ukraine, enacted by Presidential Decree No. 82/2025 of February 12, 2025, “On Additional Measures to Ensure the Availability of Medicines for Ukrainians” (hereinafter - the NSDC decision), a series of measures was initiated to improve the regulation of the pharmaceutical market, reduce the prices of medicines for the population (including through stronger state regulation of prices), and prohibit marketing services in the sale of medicines to end consumers.
7. In accordance with the aforementioned NSDC decision and under the leadership of the Office of the President of Ukraine, a coordination platform on pharmaceutical market issues was created. The purpose of this platform is to comprehensively promote the improvement of the pharmaceutical markets, from the formation of a regulatory framework to the establishment of a proper economic mechanism for price formation.
8. The platform brought together key stakeholders in the pharmaceutical market—representatives of regulatory agencies, pharmacy chains, medicine manufacturers, and public organizations.
9. This platform currently serves as a tool for information exchange between all parties involved in the development of new marketing rules for medicines in Ukraine. Meetings on this platform have more than 250 participants, which allows for the coordination of further efforts to develop new legislation.

10. It is also worth noting that equal representation of stakeholders on the platform has made it possible to find effective solutions to problems at various levels and avoid duplication of efforts by different authorities.

11. As part of this initiative, a system for publicly declaring medicine prices (national price catalog) was established, which increases transparency in pricing and ensures coordination between government agencies, manufacturers, distributors, and retail pharmacies, as well as the ability to respond quickly to violations of competition law, particularly in pricing policies for socially significant medicines.

12. From a competition perspective, this system has pro-competitive advantages, as it reduces information asymmetry and increases pricing transparency (through the disclosure of information on the declared wholesale price, the calculated maximum retail (pharmacy) price with wholesale/retail markups and taxes), which makes it difficult to use hidden discounts, “marketing” payments, and vertical price fixing.

13. In addition, as mentioned above, the catalog serves as a tool for the AMCU to detect price anomalies (sudden simultaneous price increases, differences between wholesale and retail segments) at an early stage and, as a result, increases the effectiveness of the AMCU's interventions in these markets.

14. Due to close cooperation and coordination between state authorities and participants in the pharmaceutical market within the framework of the platform, numerous regulatory acts were also developed, which contributed to the improvement of the regulation of the pharmaceutical market and increased its availability.

15. For its part, the AMCU also provided its proposals based on its enforcement practice. In line with OECD approaches, it was important to ensure that the Committee's law enforcement and regulation complemented each other.

2.2. An example of developing regulatory approaches based on law enforcement experience (regarding the application of marketing services in pharmaceutical markets)

16. Pharmaceutical markets, and in particular the marketing agreements, have been in focus of the AMCU even before the decision of the NSDC. Based on the results of studies conducted between 2012 and 2025, the Committee found that the practice of marketing agreements often harms competition in pharmaceutical markets, in particular:

- it influences the range of products offered by pharmacies due to the medicines for which the relevant services are ordered, which may reduce the availability of non-marketed medicines to end consumers.
- manufacturers and importers of medicinal products include promotional costs in the cost of medicinal products, which affects the price for the end consumer.
- it places participants in the retail medicines market in unequal conditions, since customers of marketing services (manufacturers, importers) are primarily interested in concluding contracts for the provision of marketing services with large pharmacy chains (due to their territorial coverage and the number of pharmacies).

17. In previous periods, the Committee took the following measures to promote competition:

- On March 5, 2015, 30 importers/manufacturers/marketing organizations and 95 pharmacy chains were provided with binding recommendations for consideration under No. 2-pk by the Committee regarding the revision of the terms of contracts

for the provision of marketing services, which may lead to the setting of economically unjustified prices for medicines and the prevention of the imposition of marketing services.

- On September 13, 2018, the Ministry of Health of Ukraine was provided with binding recommendations for consideration under No. 8-рк regarding the development and adoption of regulatory legal acts, which will establish clear, transparent, non-discriminatory rules for the promotion of medicinal products for all participants in the pharmaceutical markets with the aim of:
 - preventing distortion of competition in the medicinal product markets as a result of the use of marketing tools during the sale (wholesale and retail) of medicinal products;
 - provide end consumers with the opportunity to make an objective, unbiased, and independent choice of the medicinal products they need in pharmacies;
 - prevent the predominant sale (wholesale and retail) of medicinal products at inflated prices through the use of marketing tools.

18. However, such an AMCU's intervention into this market could not cover all rising issues. In view of these risks, including risks for competition, on March 1, 2025, a legislative ban on the provision of marketing services in pharmacies came into force in Ukraine until the Government introduces a separate reference of wholesale prices for all medicinal products. It was a result of the AMCU's initiative raised on the coordination platform and supported by other stakeholders.

19. Part 1 of Article 201 of the Law of Ukraine "On Medicines" establishes that the conclusion of commercial contracts, the subject of which is directly or indirectly the provision of marketing services in places of retail sale of medicines, services for the promotion of medicinal products, and other services related to the sale of medicinal products to the end consumer, are permitted exclusively between undertakings that manufacture or import medicinal products and a pharmacy and/or pharmacy chain.

20. As of October 1, 2025, the draft resolution of the Cabinet of Ministers of Ukraine "Certain issues of providing marketing and other services related to the sale of medicinal products to end consumers, and the use of tools for the actual reduction of purchase prices after the transfer of ownership of goods" (which was developed in cooperation with all stakeholders using the above-mentioned platform) provides for the regulation of the provision of marketing services in places of retail sale of medicinal products and the formation of their cost. However, the draft regulatory act has not yet been adopted.

21. Active discussions are currently underway between state authorities, market participants, and the AMCU on the development of transparent and open approaches to the use of marketing agreements to minimize the negative impact on competition in the pharmaceutical market in the future.

3. Anti-competitive practices related to pricing strategies and market power in pharmaceutical markets: AMCU enforcement in pharmaceutical markets

22. At the same time, in addition to advocating competition and cooperation with stakeholders, the AMCU continues to conduct studies on compliance with the law on protection of economic competition by participants in the pharmaceutical markets.

23. The investigation covers the actions of participants throughout the entire medicines supply chain (manufacturer/importer – distributor – pharmacy group (chain)/pharmacy/pharmacy facility).

24. The study analyzed pricing at each level for a specific list of medicines that are most popular among consumers and are sold in significant volumes in pharmacies, as well as the approaches to determining the cost of selling medicines by national manufacturers of medicines, the size of marketing payments, and their share in the total costs of the companies studied.

3.1. Regarding the enforcement in the retail market for medicines

25. Analysis of the materials available to the Committee shows that since February 2025, there has been a trend toward a decrease in sales of medicines produced by three domestic manufacturers due to restrictions on their availability at the points of sale of the top five largest pharmacy groups (chains).

26. At the same time, demand for the analyzed medicines of three domestic manufacturers during the period under review was relatively stable and did not show a tendency to decrease significantly. Instead, the decrease in consumption of these medicines by the population was associated with an apparent artificial decrease in their availability in chain pharmacies.

27. On October 2, 2025, the Committee began considering a case involving 155 licensees engaged in the retail sale of medicines, which are among the top 5 pharmacy groups (chains), on the grounds of violating the legislation on the protection of economic competition, as provided for in clause 1 of Article 50 and part one of Article 6 of the Law of Ukraine “On the Protection of Economic Competition,” in the form of anti-competitive concerted actions that may lead to the prevention, elimination, or restriction of competition.

28. The investigation is currently ongoing.

3.2. Regarding law enforcement in the wholesale market for medicines

29. The national wholesale market for medicines in Ukraine is oligopolistic. With a significant number of licenses for wholesale trade in medicines, the market leaders are the Limited Liability Company “BaDM” (hereinafter - LLC “BaDM”) and the Ukrainian-Estonian joint venture in the form of a Limited Liability Company “Optima-Pharm, LTD” (hereinafter - JV LLC “Optima-Pharm, LTD”) (hereinafter - national distributors).

30. They have one of the largest ranges of medicines (including through direct imports from many international pharmaceutical companies) and provide the widest coverage of pharmacies throughout the country, to which goods are delivered directly.

31. The combined share of national distributors in the supply of medicines to the pharmacy segment has shown steady growth over the past five years, specifically: in 2019-2020 – 70%, in 2021 – 80%, and in 2022-2023 – over 85%. The shares of other distributors compared to those of national distributors were small and tended to decrease.

32. According to the Methodology for Determining the Monopoly (Dominant) Position of Undertakings in the Market (hereinafter – the Methodology), BaDM LLC and Optima-Farm, LTD JV have market power in the wholesale market for medicines.

33. The closest potential competitor to national distributors is Venta.LTD LLC, whose share has been declining over 5 years, namely: in 2019 – 15.1%, in 2020 – 12.6%, in 2021

– 9.6%, 2022 – 6.6%, 2023 – 3.7%. The next distributors in the ranking had shares of 1.8%-1.99% in 2019 and 1.43%-1.5% in 2023.

34. Barriers to entry into this market include:

- administrative – the need to obtain the appropriate license (which, according to the licensing conditions, requires the availability of pharmacy warehouses, specialized motor vehicles, qualified personnel, etc.);
- financial (the need for significant financial investments to carry out economic activities, ensure a quality system, and maintain logistics infrastructure);
- the existence of supply contracts with importers and manufacturers of medicines;
- experience and business reputation (the commercial policies of most manufacturers/importers of medicinal products have strict requirements for the selection of distributors, in particular, concerning the part of number of warehouses and pharmacy contractors; the length of experience in such activities; the availability of letters of recommendation from other manufacturers/importers, etc. National distributors always meet the requirements set by manufacturers/importers).

35. The basis for the Committee to initiate proceedings on the violation of competition law (hereinafter - the Case) was the discovery during the investigation of similarities in the behavior of LLC “BaDM” and JV LLC “Optima - Farm, LTD” (hereinafter - the Defendants), which consisted in setting identical and/or similar prices for the sale of medicines, as well as similar price growth dynamics and similar behavior in terms of pricing for medicines during the period under investigation (2019-2023, with the violation occurring between 2020 and 2023).

36. As part of the case, the monthly weighted average purchase prices and sales prices of such medicines by distributors were also analyzed; A daily analysis of the selling prices of medicines by distributors was conducted; the dates of changes in the selling prices of the relevant medicines by the defendants were established; an analysis of the formation of the selling prices of medicines by the defendants was conducted; an analysis of the formation of the supply and distribution mark-up by the defendants was conducted.

37. As a result of the case review, the AMCU proved the coordination of conduct between the defendants and, on July 31, 2025, by Decision No. 370-p, the AMCU obliged the defendants to cease the specified violation and imposed a fine on LLC BaDM in the amount equivalent to €49.3 million, and on Optima-Farm, LTD LLC - in the amount equivalent to €50.6 million. (*NBU exchange rate as of 31.07.2025 48.1 UAH*)

38. As of October 10, 2025, both distributors had initiated court proceedings to appeal the Committee's decision.

4. Conclusions

39. Pharmaceutical markets remain in the spotlight in Ukraine, not only for the competition authority but also for sectoral regulators. Therefore, it is important to coordinate efforts to promote competition and improve regulation.

40. The experience of establishing a coordination platform for interaction between state bodies, market participants, and the public is a positive example of consolidating the efforts of all stakeholders. This platform has ensured ongoing dialogue between regulators, pharmacy chains, manufacturers, and distributors, which has contributed to increased

market transparency, the formation of an effective regulatory framework, and the development of fair competition.

41. At the same time, the experience of the enforcement by the Antimonopoly Committee of Ukraine shows that pharmaceutical markets are particularly sensitive to anti-competitive practices related to pricing mechanisms at the wholesale level and restrictions on the range of products in retail trade.

42. Uncertainty in medicine pricing mechanisms and market concentration may contribute to the coordination of pricing behavior among market participants.

43. Despite these challenges, the Antimonopoly Committee of Ukraine continues to systematically analyze the market, identify signs of concerted behavior, and take responsive measures. Analytical work is carried out at all stages of the supply chain—from the manufacturer to the pharmacy chain—to prevent violations, ensure a level playing field for all market participants, and promote accessible pharmaceutical markets.