

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

Cancels & replaces the same document of 12 May 2017.

Competition Issues in Aftermarkets - Note from Ukraine

21-23 June 2017

This document reproduces a written contribution from Ukraine submitted for Item 4 of the 127th OECD Competition committee on 21-23 June 2017.

More documents related to this discussion can be found at

www.oecd.org/daf/competition/aftermarkets-competition-issues.htm

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Ukraine

1. Experience and approaches to enforcement

1. In 2016 the Antimonopoly Committee of Ukraine initiated the inquiry in the markets of equipment and consumables for haemodialysis, peritoneal dialysis. These equipment and consumables are procured at the expenses of state and/or local budgets. The grounds for the initiation of this inquire were the numerous claims on the procurement of consumables for dialysis.
2. Haemo/peritoneal dialysis treatment is a medical service which is delivered for patients suffering from stage 5 chronic kidney disease (hereinafter – CKD). These services are provided at the patients’ residence at the expenses of state and/or local budgets.
3. Since around 2009 the allocation of state funds for the procurement of the equipment for haemodialysis has been terminated. Annual allocation of funds for the procurement of consumables for haemodialysis and peritoneal dialysis is provided for by the budgetary program.
4. The equipment for haemodialysis and peritoneal dialysis is not procured at the expense of the state and local budgets. This equipment is provided to the health care centres by suppliers as a charity or humanitarian aid or under free-of-charge use contracts, rent contracts on the grounds of relevant Memoranda between suppliers and public authorities. In most cases such terms for equipment supply provide the necessity of its use only with consumables produced by the producer of relevant equipment which has been “presented” to hospital. In case of failure to comply with this requirement the supplier of equipment reserves its right to remove its equipment from the hospital.
5. So, the terms for the supply of equipment for dialysis by Ukrainian health care centres consequently affects its approaches to the formulation of bids for the procurement of consumables necessary for providing medical services of neurological profile.
6. The procurement of consumables is performed through the open tendering procedure.

2. Market definition in aftermarket cases

7. Due to the operating conditions of abovementioned markets, the primary market is the market of equipment, while the secondary market or aftermarket is the market of consumables, which directly depends on the available in the market equipment and the behaviour of market participants.
8. The product boundaries for the market of equipment for haemodialysis shall be equipment needed for the delivery of medical care for patients suffered with stage 5 CKD through the procedure of haemodialysis.
9. The product boundaries for the market of consumables for haemodialysis shall be consumables needed for the delivery of safe, high-quality and efficient medical care through procedures of haemodialysis carried out on relevant equipment available in the health care centres.

10. Pursuant to the existing in Ukraine organizational procedure for the delivery of medical care the markets of equipment and consumables for haemodialysis are regional.

3. Market power in aftermarkets

11. There are two dominant companies in the regional markets of equipment and consumables for haemodialysis. These companies provide equipment and consumables to medical care centres through relevant economic entities (residents of Ukraine).

12. Due to their significant market share in regional markets and peculiarities of terms for the equipment supply to medical care centres these companies are able to affect consumables' supply terms, prices and its availability in the markets.

13. During recent years producers of equipment for haemodialysis present in Ukrainian market are promoting own-produced products using similar marketing approaches. These approaches provide free-of-charge supply of equipment necessary for haemodialysis to hospitals through concluding between equipment suppliers (residents of Ukraine) and health care centres donation agreements, free-of-charge use contracts, free-of-charge rent or sublease contracts. Such agreements could include provisions that de-facto establish control of the equipment suppliers over the process of formulating bids for the procurement of consumables necessary for the provided equipment by health care centres.

4. Exclusionary and exploitative conduct

14. The competition between producers of equipment for haemodialysis is usually happening through their ability (due to agreements with bodies of local self-government of regional bodies of health care) to supply hospitals with necessary equipment for haemodialysis on a free-of-charge basis. In the future, this enables these producers to ensure constant sale of their own-produced consumables and, consequently, maintain and/or strengthen their market power.

15. Negative consequences of such competition could be the following:

- leading companies after they have reached significant level of dominance in regional markets, getting new markets for sale their own-produced consumables in regions and ensured their ability to constantly maintain and gradually increase supply volumes of such consumables de-facto establish barriers to market entry of other producers of similar (equivalent) medical products (consumables), which are compatible with the available in hospitals equipment, through the practical implementation of their contractual relations with hospitals on equipment supply. This leads to the restriction of price competition in the markets of consumables for haemodialysis;
- as of now most hospitals in the country are equipped with haemodialysis facilities of different producers, kinds, types and modifications that could lead to some challenges for hospitals' personnel in terms of handling equipment for medical care delivery and formulating bids for the public procurement of consumables necessary for the available in the hospital equipment. The availability of equipment of different models and producers in the possession of the particular hospital makes it impossible to precisely assess the number of medical procedures that are going to be carried out on each model of this equipment throughout the year.

5. Efficiency gains and other objective justifications

16. In terms of efficiency gains it could be mentioned that existing situation in the market of equipment for haemodialysis ensures relative stability in the supply of hospitals with relevant equipment, which, in turn, creates conditions for sustainable delivery of medical care for patients suffered with stage 5 CKD.

6. Remedies and other policy considerations

17. With due consideration of performance peculiarities of the markets of equipment and consumables for haemodialysis, which is focused on the delivery of lifesaving medical care for patients suffered with stage 5 CKD, it is much more relevant to use competition advocacy measures for addressing problematic issues in these markets.

18. In particular, these advocacy measures could be taken through providing proposals addressed to the Government on the implementation of complex approaches in these markets. Such approaches should be focused on the development of competition, including price competition, between market participants through the implementation of the following:

- reference pricing for equipment and consumables;
- a single dialysis area in Ukraine (funding treatment of patients regardless of the place of their residence and the location where the procedure is performed) through ensuring equality of all economic entities (regardless of their form of property and legal organization) in the delivery of medical care services on haemodialysis procedures.