

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

Algorithms and Collusion - Note by Ukraine

21-23 June 2017

This document reproduces a written contribution from Ukraine submitted for Item 10 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/algorithms-and-collusion.htm.*

Please contact Mr. Antonio Capobianco if you have any questions about this document
[E-mail: Antonio.Capobianco@oecd.org]

JT03414223

Ukraine

1. In 2015 the AMCU considered the case on the violation of the legislation on protection of economic competition in the form of anticompetitive concerted actions in the retail market of Kyiv. This violation was committed by Ukrainian distribution networks and companies affiliated with transnational corporations, which had been working under well-known brands, namely AUCHAN, BILLA, METRO, and also research company LLC “ACNielsen Ukraine”, subsidiary company of ACNielsen.
2. The case was initiated in 2012 at the AMCU’s own discretion due to the fact that the prices for food commodities in retail sales were continuously growing, while the analysis of market environment disproved the object reasons for such growing. Based on the results of the consideration of this case the AMCU issued the decision dated May 29, 2015 in which the following had been established.
3. The aggregate share of defendants in terms of their turnover in the market of Kyiv during the period of 2010-2012 constituted more than 80 percent. Thus their behaviour had a substantial influence on the market, on the state of competition and on the price trends.
4. Researched market is complicated and heterogeneous in term of its structure and composition of its participants, unstable in terms of duration and rate of grows, and also non-transparent and asymmetrical in terms of information endowment of all participants (suppliers and distribution networks as well as ultimate consumers).
5. All distribution networks have different features that should determine the specificity of their behaviour in the market with complicated structure, heterogeneous products, naturally low level of transparency and also complicated system of competition relations, which decrease possibilities for the conduct of coordinated behaviour.
6. The structure of the market is pro-competitive. None of economic entities had signs of dominance. The market had a potential for the substantial competition between participants that would have to lead to the efficient pricing and the increase of quality of selling goods.
7. Distribution networks are complicated systems by its nature. They incorporate numerous shops. The number of product names (items) represented on the shops’ shelves constitutes thousands of positions. This assortment of goods consists of substitute, similar, complementary, non-interchangeable or alternative goods. At the same time prices should address the fact that consumers in modern supermarkets are making their choice without involvement of professional salesmen or commodities experts. Thus, the pricing mechanisms in distribution networks have to ensure efficient complex of prices for the whole package of goods instead of the efficient price for one particular good. Such approach to pricing enables distribution networks to enjoy all benefits of modern chain retailing. Such enlargement in the efficient pricing objective requires respective increase of the information endowment.
8. The assurance of the efficient pricing management requires relevant systematization of a wide-range assortment of goods. Such systematization is performed through aggregating goods into particular groups – categories, which enable distribution networks to perform more efficient pricing, procuring and selling policy.

9. Except aggregating goods into categories/sub-groups/groups, etc., the efficient mechanism for setting and changing prices for goods could also be ensured through the use by distribution networks of optimized **automated pricing systems, which imply processing huge amounts of information.**

10. Distribution networks use different software solutions for pricing and setting a new level of price for competitive product. Such solutions could include or be supported by utility programs, which are designed for processing particular data. But the general algorithm for setting a new level of price is similar. Initially, distribution networks process the data on procurement prices for relevant goods (usually authorized persons enter information on prices for goods delivered into the data basis). Then, through the use of the established trade margin they calculate the level of prices at which shops of this distribution network sell goods to ultimate consumers.

11. Distribution networks permanently face information uncertainty when running their business. Such uncertainty is related to both internal indicators of their activity and external factors that affect their activity. When selling thousands of commodity items on shelves of their shops, distribution networks have to maintain their awareness on the current state of these indicators, which are considered as a basis for taking strategic decisions (on trade policy, procurement policy, pricing etc.), and furthermore – to adjust such indicators in line with market conditions and competition environment.

12. It should be noted that the AMCU was not provided with information on how the state of competition environment is taken into account by such pricing software solutions when setting prices, except cases when manual price adjustment could be performed with regard to given commodity items.

13. The analysis of approaches of distribution networks to pricing in terms of the account of price competition has indicated that the price monitoring performed by distribution networks takes into account considerably less amount of price data than the volume of price data, which they usually applies.

14. The AMCU has found out that in fact the only information that is considered by distribution networks when setting prices is the information on internal activity indicators of particular competing networks, which is provided only by LLC “ACNielsen Ukraine”. Distribution networks cannot obtain such information from open sources.

15. The AMCU has found out that the concerted actions were taking place in the market for the long period of time. These actions enable distribution networks to obtain additional incomes through the unjustified increase of prices and the dictatorship of unfavourable and unequal terms of cooperation to the suppliers of goods. The AMCU believes that such actions in potentially competitive market have been made possible due to the exchange of information between distribution networks through research company LLC “ACNielsen Ukraine”.

16. The activity of distribution networks is supported with constant and comprehensive exchange of information with the help of LLC “ACNielsen Ukraine” (through the means of Internet, special server or portals, e-mail, informal conversations, trainings, seminars, meetings). These allow the following:

- track trends of main performance indicators of distribution networks and adjust price strategy on a weekly basis;
- track and adjust assortment policy and relations with suppliers on a monthly basis;

- plan objectives and means of its achievement on an annual basis;

17. The analysis has shown that the level of detail of the information exchanged and the frequency rate of such exchange exceeds in times the level, which is necessary and sufficient for the market situation assessment. But at the same time such level is sufficient for ensuring relevant coordinated behaviour of cartel participants.

18. In its decision the AMCU has come to the conclusion that the activity of LLC “ACNielsen Ukraine” and distribution networks had created a mechanism, which substantially reduced the level of their informational uncertainty in relations between distribution networks and improved asymmetry of information, which is considered by market participants in taking decisions, encouraged possibility of distribution networks to act under conditions of market power. The mentioned system of information endowment has enabled distribution networks to conduct similar actions with regard to the determination of terms of contracts with suppliers, the performance of assortment and pricing policies, which were not defined by objective reasons, and also to control over the adherence of similar trends by all participants.

19. Upon results of the consideration of the case the AMCU has taken a decision dated May 29, 2015, which provides the following:

- distribution networks, which had performed together with LLC “ACNielsen Ukraine” the exchange of information and of data on substantial terms of economic activity with such level of detail, aggregation and updating **that encouraged coordination of behaviour between them and respectively led to the restriction of competition**, have conducted a violation in the form of anticompetitive concerted actions.
- distribution networks conducted a violation in the form of anticompetitive concerted (similar) actions through the use of similar mechanisms for interaction with suppliers that had led to the similar price changes for the goods sold by distribution networks to ultimate consumers, which has led to the restriction of competition even while the analysis of market environment had disproved the object reasons for the conduct of such actions.

20. Relevant fines were imposed for the mentioned violations.

21. The decision also provided that:

- distribution networks and LLC “ACNielsen Ukraine” are obliged to bring their activity on information acquisition and distribution into compliance with the requirements of the legislation on protection of economic competition;
- distribution networks are obliged to bring their activity including contracting relations with suppliers and/or producers of goods and their approaches to pricing for ultimate consumers into compliance with the legislation on protection of economic competition.