

23 November 2017

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE****Hearing on Common Ownership by institutional investors and its impact on  
competition - Note by Ukraine****6 December 2017**

This document reproduces a written contribution from Ukraine submitted for Item 6 of the 128th OECD Competition committee meeting on 5-6 December 2017.

More documents related to this discussion can be found at [www.oecd.org/daf/competition/common-ownership-and-its-impact-on-competition.htm](http://www.oecd.org/daf/competition/common-ownership-and-its-impact-on-competition.htm)

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## *Ukraine*

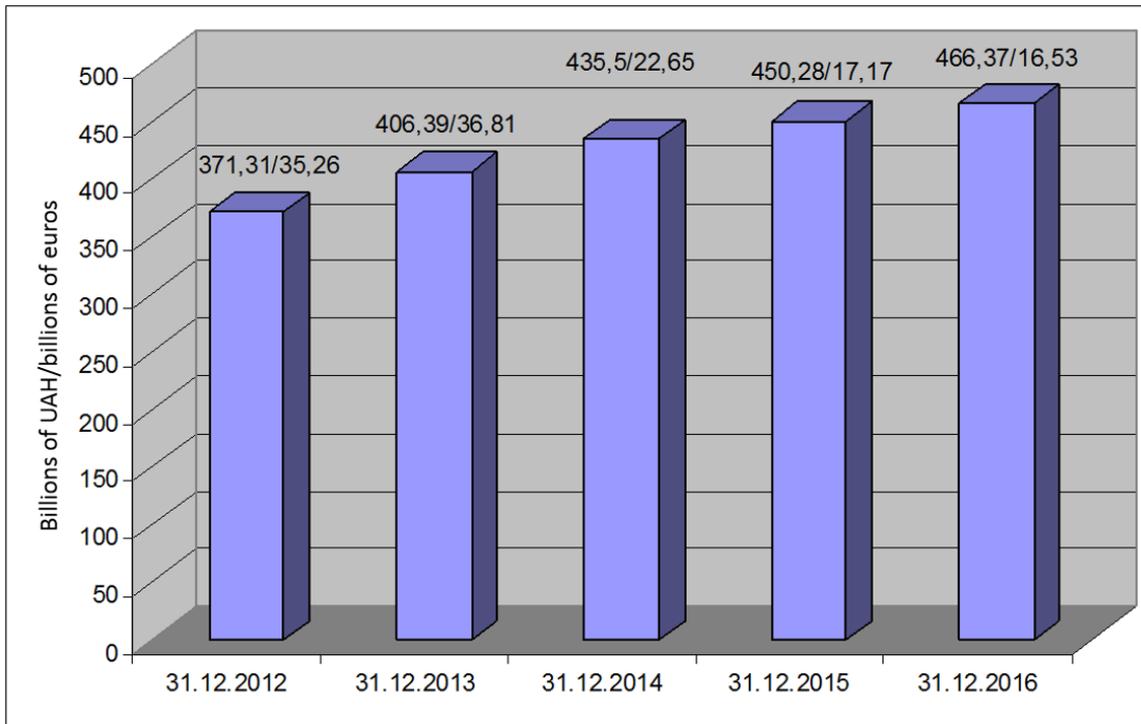
### **1. General market description**

1. The activity of institutional investors plays a significant role in the functioning of the economy of any country. Institutional investors act as financial intermediaries, whose main task is to accumulate long-term capital and its efficient placement. For the economy of our country, institutional investors are quite new institutions whose activities are developing.
2. The most actual form of financial intermediation is the collective investment system, which includes investment and pension funds.
3. As of the end of 2016, the number of investment funds in Ukraine was 2,223. For comparison, at the beginning of the year, the number of such institutional investors reached 2,131. During the past year, the regulator of the securities market received 65 notifications regarding the decision to liquidate the joint investment institution.
4. As of 01.01.2017, on the Ukrainian stock market, asset management activity of institutional investors was carried out by 300 professional participants. During 2016, 16 securities licenses were revoked by the securities market regulator for the conduct of professional asset management activities of institutional investors.

### **2. Types of investment funds in accordance with national legislation**

5. Investment funds in Ukraine can be of two types: corporate and unit investment funds.
6. Corporate investment fund is a legal entity, which is formed in the form of a joint-stock company, its founders may be the persons (or individuals) who decided to establish it.
7. Asset management of the corporate fund is carried out by the asset management company on the basis of the relevant agreement.
8. Unit investment fund is a set of assets belonging to participants of such a fund, are managed and accounted by the asset management company separately from the results of its economic activity. Unit fund is not a legal entity.
9. In fact, unit investment fund is a so-called "basket of assets" of an asset management company.
10. According to official data for 2016, total registered securities issued by institutional investors totaling UAH 466.37 billion / EUR 16.53 billion (Figure 1).

**Figure 1. Volume dynamics of registered securities issuance of institutional investors in 2012 - 2016 (aggregate), UAH billions / billion euros**



11. Due to the growth of the euro against the Ukrainian hryvnia at the end of 2014, we see in Chart 1 that the increase in the volume of institutional investors' registered securities issuance in UAH in the period from 2014 to 2016 shows a decline in the indicated values in euro.

12. On the securities market, there was a decline in the volume of institutional investors' securities trading, which in 2016 reached 70.39 billion UAH / 2.48 billion euros, which is less by 31.45% (in UAH) compared to the indicator in 2014 (Figure 2).

**Figure 2. Volume of institutional investors' securities trading in the securities market in 2012 - 2016, UAH billions / billion euros**



### 3. Non-state pension funds

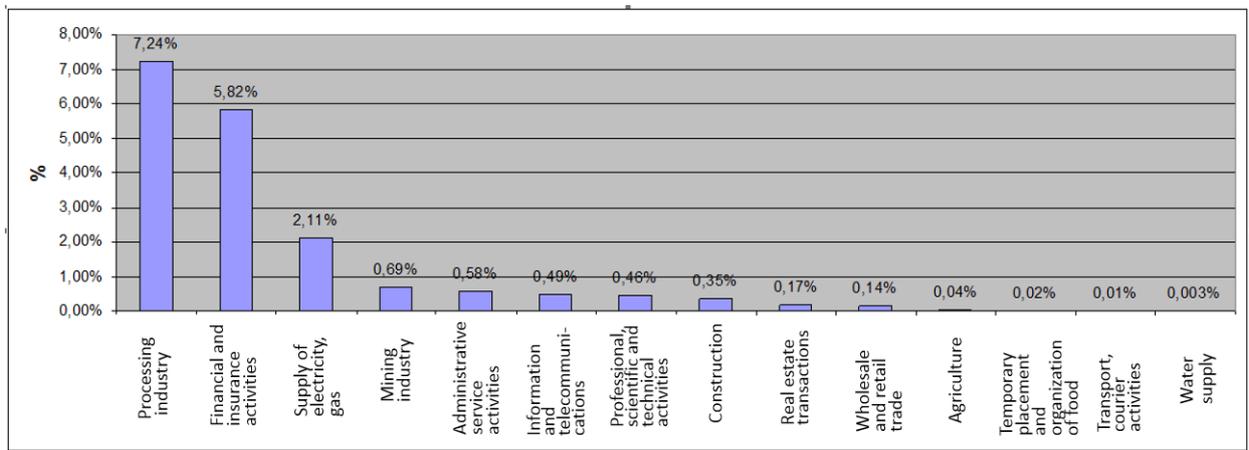
13. Non-state pension funds are another type of institutional investors.
14. In our country non-state pension funds are divided into three main types.
  - The first type is open non-state pension funds, whose members can be any persons, regardless of the place and nature of their work.
  - The second type is professional pension funds, the founders of which may be employers, trade unions, or individuals interconnected with the common kind of their professional activities.
  - The third type is corporate non-state pension funds. The peculiarity of these funds is that a budgetary institution has the right to be the founder of a corporate pension fund or to make pension contributions to already established pension funds only if the creation of such funds or the implementation of pension contributions is provided for by laws of Ukraine, Government decisions or decisions of relevant local governments .
15. Asset management companies manage the assets of non-state pension funds on the basis of a remuneration contract provided for under the terms of such an agreement.
16. According to official statistics, today in Ukraine there are 64 registered non-state pension funds, of which 8 are corporate and 3 are professional.
17. At the end of the first quarter of 2017, the predominant directions of investment of pension assets were securities whose income was guaranteed by the Government of Ukraine (42.3%), deposits in banks (40.3%), corporate bonds issued by residents of Ukraine (9, 3%), shares of Ukrainian issuers (0.7%).

**4. The activity of institutional investors in certain sectors of the economy**

18. According to rough estimates today, shares and bonds of enterprises in assets of non-venture institutional investors make up 21.6%, of which 18.11% are shares, 3.49% are bonds of enterprises.

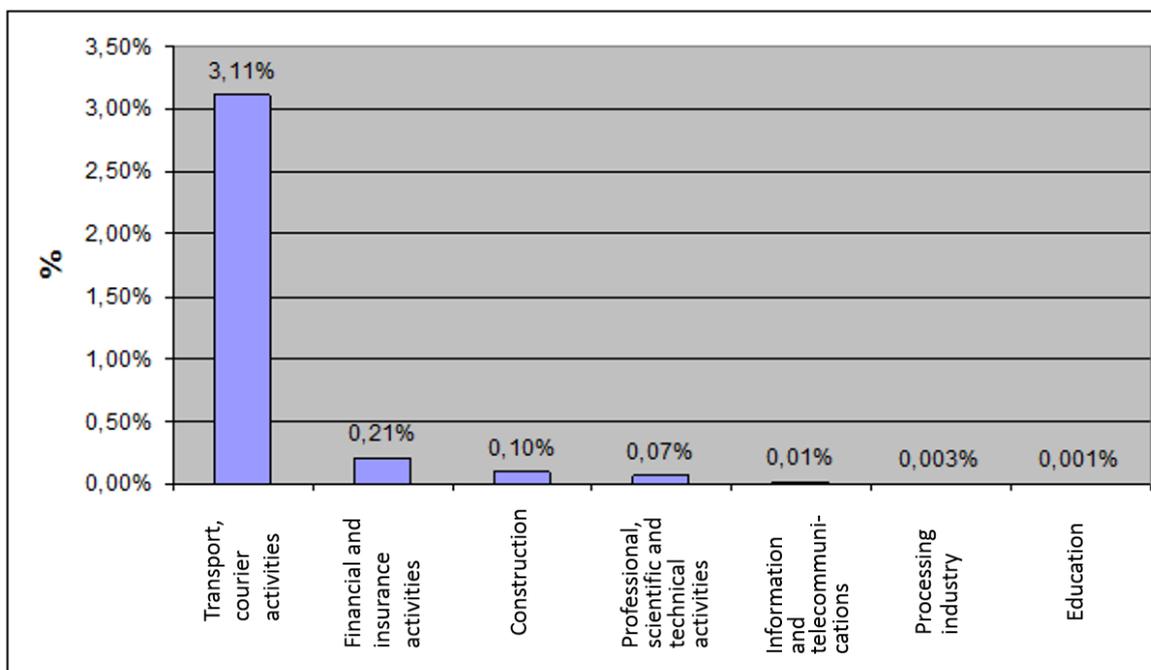
19. The largest specific weight in the assets of non-venture institutional investors is taken by shares of enterprises in the processing industry, financial services and fuel and energy industry at the level of 7.24%, 5.82% and 2.11% respectively (Figure 3).

**Figure 3. Information on ownership of shares of enterprises by non-venture institutional investors, as at 30.09.2017**



20. Non-venture institutional investors mostly hold the bonds of transport enterprises, courier services (3.11%), financial sector enterprises (0.21%) and construction (0.1%) (Figure 4).

**Figure 4. Information on bonds of enterprises in assets of non-venture institutional investors, as at 30.09.2017**



21. Today's meeting of the OECD is quite interesting both in the context of assessing the possible impact of institutional ownership on national markets, and in the context of the competition authorities' sufficiency of competencies in preventing the concentration of markets by institutional investors.

22. To analyze the impact of joint ownership on markets, the Antimonopoly Committee of Ukraine applies the following instruments:

- study the peculiarities of the establishment and functioning of institutional investors;
- consultations with regulators of financial services markets (National Commission on Securities and Stock Market, National Commission, which carries out state regulation in the field of financial services markets);
- research on applications for concentration, which participants are institutional investors and companies that carry out activities in their favor.

## 5. Peculiarities of dealing with cases on concentrations with the participation of institutional investors

23. For the Antimonopoly Committee of Ukraine it is quite difficult to trace the presence of institutional investors in the relevant sector of the economy in order to prevent the concentration of this sector by certain institutional investors.

24. Today, the Committee more frequently receives applications for permission to concentration based on applications of asset management companies.

25. According to the Ukrainian legislation, the acquisition of control relations requires the prior approval of the Committee bodies if the value of the assets and the volume of sales of the goods of the participants in the concentration exceeds the relevant

threshold values and a block of shares is acquired in an amount that reaches or exceeds 25 or 50 percent in the authorized capital.

26. The term "control" refers to the decisive influence that can be achieved by:

- conclusion of agreements and contracts that make it possible to determine the conditions of economic activity, serve as the governing body;
- replacement of the position of a manager, deputy head of the supervisory or executive body of an entity that already occupies one or more of these positions in other entities.

27. That is, the acquisition of minority stakes does not require prior authorization, which in turn prevents control of the acquisition.

28. Investigating the impact of the appropriate concentration on the market poses some difficulties, due to the peculiarities of the relations between asset management companies and institutional investors, according to which the asset management company, on the basis of the contract, provides asset management services to the relevant institutional investor.

29. The same company can provide asset management services to several institutional investors. One institutional investor may have asset management agreements with several companies.

30. In the practice of considering applications for concentration on the application of the asset management company, the Antimonopoly Committee of Ukraine adheres to the position that the asset management company of a unit investment fund and unit investment funds are linked by the control relationship. Taking into account the specifics of these funds, their absence of management bodies, the asset management company is in fact the governing body of a unit investment fund. If the asset management company manages the assets of several unit funds, it actually replaces the manager's position.

31. Ukrainian legislation on economic competition protection, contains provisions whereby the concentrations are not considered purchasing shares (stocks) of the entity by entity whose main activity is conducting financial transactions or transactions with securities if the acquisition is carried out with a view to the next resale, provided that the said person does not vote in a higher body or other management bodies of the entity. In this case, the next resale must be made within one year from the date of purchase of the shares (stocks, shares).

32. In this context, the question arises whether it is or it is not right to consider the agreement on asset management as a control relationship, in order to demand from asset management company the disclosure of institutional investors, the assets of which is managed by such an asset management company, to assess the appropriate concentration and decide whether it is admissible or in need to ban.

33. Another issue is that the assessment of the competitive environment in the market has a link to a certain period of time. Therefore, it would be interesting to obtain information on the experience of other countries in the consideration of concentrations with the participation of institutional investors, the peculiarities of analysis and assessment of its impact on the market, on the practice of identifying a significant concentration of joint ownership in certain sectors of the economy, as well as its prevention.