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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Procompetitive Industrial Policy – Note by Ukraine

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More documents related to this discussion can be found at
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Ukraine

1. General overview

1. Currently, the formation of an updated industrial policy in Ukraine, which would take into account, among other things, trade, science and technology, competition policy, and other instruments of economic regulation, is a key element of further reforming the national economy and ensuring sustainable economic growth in Ukraine. Moreover, the coordination of industrial and other policies cannot be postponed until the postwar period.
2. Therefore, the President of Ukraine, the Government and the Parliament of Ukraine, as well as the business community, are making efforts to overcome the challenges and consequences caused by the armed aggression of the Russian federation against Ukraine, stimulate the business activity of Ukrainian producers, improve the investment climate, create economic conditions for the restoration, modernization and growth of the Ukrainian economy, including through the introduction of various economic platforms for the reconstruction of Ukraine (such as United 24, "Made in Ukraine").
3. At the same time, despite the war, the role of the Antimonopoly Committee of Ukraine (hereinafter - the AMCU, the Committee) as a state authority responsible for protecting economic competition is growing in the process of forming an updated industrial policy

2. On the state and trends of economic and social development of the real sector of the economy

4. This contribution was prepared in cooperation with the Ministry of Economy of Ukraine ¹.
5. According to the data obtained on the results of industrial enterprises' activities in 2023, the industrial production index was 105.9% compared to the previous year.
6. The growth in production volumes compared to the previous year's month began in March 2023 and amounted to 51.2%.
7. The upward trend continued until the end of 2023.
8. A positive contribution to the growth of the industrial production index was made by the manufacturing industry, whose output increased by 12.3%.
9. Positive dynamics were observed in many industrial sectors with the largest share in the manufacturing industry, in particular: production of food, beverages and tobacco products - 115%; production of basic pharmaceuticals and pharmaceuticals - 102.4%; textile production - 100.6%; production of chemicals and chemical products - 115.5%; metallurgy, production of finished metal products, except for machinery and equipment - 108%; metallurgical production - 100.2%; production of ready-made metal products.

¹ In preparation for this roundtable, the AMCU addressed the Ministry of Economy of Ukraine, which is the main authority in the field of industrial policy making, with a letter as of 14.05.2024 № 3322-07/35531-03.

10. In addition, according to Ukrmetallurgprom, despite the war and significant damage to Ukraine's industrial infrastructure, Ukrainian steelmakers continue to gradually increase productivity. A comparison of the productivity of the surviving enterprises (excluding those in Mariupol, which were put out of commission by the Russian aggressors) in 2022 and 2023 shows some progress in the industry.

11. Thus, on the one hand, this indicates the gradual adaptation of the Ukrainian economy to the difficult wartime conditions. In 2024, according to the forecasts of the Ministry of Economy, GDP growth is expected to be no less than 4 percent. Of course, due to the fall of the economy by almost a third, we cannot talk about recovery to the pre-war level, so this indicates that the economy continues to need active support from the state.

3. Industrial policy and competition advocacy

12. Pursuant to the Law of Ukraine "On the Antimonopoly Committee of Ukraine" (Article 20-1), the Committee, including using the methodology based on the OECD Competition Assessment Toolkit², constantly examines draft legislative acts related to industrial policy that may affect competition, including those submitted by members of parliament.

3.1. In the area of public-private partnerships

13. Ukraine has faced unprecedented destruction of infrastructure, including industrial infrastructure, due to the war. We already realize that it will be difficult to rebuild the existing scope of destruction using public funds alone. Therefore, private businesses, including foreign ones, should also be involved in the reconstruction. Of course, the government is making efforts to create interesting conditions and formats of cooperation for business so that private capital can join the reconstruction, including industrial infrastructure. In particular, public-private partnerships (PPPs) are such a format.³

14. In order to improve (including simplify) the mechanism for attracting private investment using the public-private partnership mechanism to accelerate the restoration of war-damaged facilities, a group of members of parliament developed a relevant draft law (Reg. No. 7508 of 01.07.2022).

15. However, despite a number of positive aspects of the draft law, it also contained certain discriminatory provisions against non-residents that would complicate their participation in the relevant public-private partnership.

16. Thus, the draft law provided for amendments to the current Law of Ukraine "On Public-Private Partnership", including the list of persons who may be determined as candidates for participation in the tender for the selection of a private partner, while allowing only resident legal entities to participate in such tenders.

17. Taking into account the above, to ensure equal (non-discriminatory) participation of both resident and non-resident legal entities in all stages of the tender for the selection

² Our MRs on impact assessment of regulations and draft are available in English via: https://amcu.gov.ua/storage/app/sites/1/2023newAMCU/%D0%90%D0%BD%D0%B3%D0%BB%20%D0%BC%D0%BE%D0%B2%D0%BD%D0%B0%20%D0%B2%D0%B5%D1%80%D1%81%D1%96%D1%8F/Methodological_Recommendations_on_the_Assesment_of_legal_acts.pdf

³ A public-private partnership is a joint business project between the state and a private investor on mutually beneficial terms. The Law on Public-Private Partnership was adopted in 2010

of a private partner, the Committee proposed to amend the mentioned draft law in this part, specifying that non-resident legal entities may also be candidates⁴.

18. The Committee is convinced that clear and transparent procedures for public-private partnerships will increase the interest of foreign investors in participating in such investment and cooperation mechanisms, which in turn will contribute to the faster reconstruction of Ukraine.

3.2. In the area of public procurement of goods localized in Ukraine.

19. As part of the update of public procurement legislation, a mechanism was introduced for bidders to confirm the degree of localization of production for a certain category of goods⁵. According to the defined list of goods, the minimum localization requirement applies to goods in the machine-building industry: in particular, buses, trucks, transformers, generators, railway rolling stock, fire trucks, garbage trucks, helicopters, and airplanes⁶.

20. The degree of localization of production is determined independently by the manufacturer of the goods being procured and confirmed by the Ministry of Economy in accordance with the procedure established by the Cabinet of Ministers of Ukraine. At the same time, the mechanism provided for independent (without confirmation by the relevant competent authorities) declaration of information on the degree of localization of production is not effective enough in practice. The mechanism established by the legislation does not provide for a real opportunity to verify the accuracy of such self-declaration.

21. Despite the fact that the purpose of introducing this mechanism was, among other things, to stimulate industrial production by modernizing and developing the domestic industry, the current mechanism for implementing and controlling the degree of localization of production in public procurement procedures has not in practice ensured the function of protecting the interests of domestic producers and at the same time has not become a driver of economic competition.

22. The AMCU has repeatedly expressed its position, including to members of the Parliament, that equal competitive conditions for the participation of domestic and foreign producers are the key to the development of domestic industry and the corresponding incentive for further growth of competitiveness of Ukrainian resident producers in the global and European markets, which, as a result, leads to a real increase in jobs and development of the national economy.

23. In this regard, the AMCU has prepared proposals that will increase the efficiency of the use of production localization, taking into account competitive aspects in the public procurement system, and sent them to members of parliament for consideration. Discussions are currently underway.

⁴ The draft law is currently being considered by the parliament.

⁵ The degree of localization of production is an indicator of the local component in the share of the cost of raw materials, components, assemblies, parts products, works, services and other components of domestic production in the cost of the goods that are the subject of procurement

⁶ Localization requirements do not apply to alternatives manufactured in countries with which Ukraine has signed trade agreements: EU, USA, UK, Japan, South Korea, Canada and others.

4. On the creation of economic platforms to boost production in Ukraine

4.1. Regarding the All-Ukrainian Economic Platform "Made in Ukraine"

24. In accordance with the Decree of the President of Ukraine No. 31 as of January 26, 2024, the All-Ukrainian Economic Platform "Made in Ukraine" was launched under the patronage of the President of Ukraine for constant communication and coordination of interaction between government agencies, representatives of relocated enterprises, domestic business (large, medium, small), public associations of entrepreneurs, foreign investors, politicians, scientists, and experts.

25. The purpose of the platform is to strengthen economic ties, constant communication between the state and Ukrainian business, and to assist Ukrainian producers.

26. This means stimulating demand for Ukrainian goods from the state and the private sector, promoting investment in the real sector: cheap money, connecting to networks and developing industrial infrastructure, compensating investments through taxes, and developing non-resource exports.

27. The "Made in Ukraine" policy is aimed at changing the structure of the economy and increasing the production of high value-added goods.

28. This is not a question of restrictions for foreign goods, but rather about introducing incentives that will help Ukrainian entrepreneurs to occupy their niches in the domestic market and enter foreign markets.

29. In order to concentrate project and administrative processes on the basis of one platform, one body of the Ministry of Economy, it is envisaged to establish a central office for managing the platform and the "Made in Ukraine" processes.

30. The functions of this office will include, in particular:

- sectoral and regional development points: analysis of the development potential of industries and regions, providing recommendations on support instruments, development and implementation of sectoral strategies to increase the global competitiveness of Ukrainian producers;
- development of the cluster model of the economy: stimulating the creation and development of clusters that support innovation and commercialization of new value-added products, providing recommendations;
- industrial park support management: development and adaptation of policies aimed at stimulating the development of industrial parks, analysis and evaluation of the effectiveness of the support provided, and provision of recommendations for the development of support programs;
- export support: creation of programs that facilitate access to international markets, including assistance in adapting to international standards, certification, logistics and market research;
- educational programs and training: development and implementation of educational programs to improve the skills of workers in industry;
- partnership with the private sector: interaction with business at the level of companies and business associations.

31. In order to popularize the state policy "Made in Ukraine" initiated by President of Ukraine Volodymyr Zelenskyy, the Cabinet of Ministers of Ukraine is working to improve the relevant regulatory framework.

32. At the same time, the activities of the All-Ukrainian Economic Platform "Made in Ukraine" and the implementation of the relevant state policy in this direction will have a positive impact on the state of competition in the relevant markets of Ukraine, promote the development of fair competition, as well as increase the competitiveness of the national economy.

5. Conclusions.

33. In Ukraine's current circumstances, the policy of developing domestic production, supporting non-resource exports and attracting investment in the real sector is the only possible way to ensure sustainability and development.

34. The economic strategy of active support of national producers with public resources, creating preferences for them that provide for certain restrictions on competition, is known as a means of accelerating the economic development of countries that have had to face economic difficulties, including those caused by military destruction.

35. At the same time, experience shows that, firstly, such a policy can be successful and effective only for a limited time, and then stagnation sets in; secondly, it creates risks of oligarchization, which we are now actively fighting; thirdly, it is necessary to carefully consider how the chosen ways and means of supporting the national producer will comply with the principles and approaches of the European Union to state aid to undertakings.

36. Therefore, it is important for Ukraine to apply the elements of the strategy of active state support for the national producer very carefully, prudently and in close cooperation with European partners. The Committee is currently involved in the development of legislative safeguards against possible negative consequences for competition and the economy as a whole.

37. To summarize, it is important to note that only effective, transparent and fair competition can ensure the stability of the Ukrainian economy in difficult times of war. Moreover, it is the key to successful post-war recovery. The Committee will continue to contribute to the development of an updated industrial policy, including by developing and submitting to i) members of parliament on draft laws, and ii) the Government on government acts, proposals for pro-competitive approaches for the recovery and economic growth of Ukraine - preventing restrictions on competition and ensuring free access to relevant markets.