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Competition and Corruption in Public Procurement – Note by Ukraine

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1. Introduction

1. Public procurement plays a central role in the functioning of the state and the economy, accounting for a significant share of public expenditure and serving as an important mechanism for the delivery of public services and infrastructure. At the same time, due to the substantial financial resources involved, the sector remains particularly vulnerable to corruption risks and anticompetitive practices.
2. Over the past decade, Ukraine has implemented significant reforms aimed at increasing transparency and competition in public procurement, most notably through the development of the Prozorro electronic procurement system. Based on the principles of openness, equal access to information, and digitalisation, Prozorro has substantially improved the transparency of procurement procedures and public access to procurement data.
3. Nevertheless, enforcement practice demonstrates that transparency alone is insufficient to eliminate corruption risks or collusive conduct in procurement procedures. In practice, bid rigging and other anticompetitive practices may coexist with corrupt conduct involving contracting authorities or public officials, creating complex enforcement challenges that require coordination between competition, anticorruption, and law enforcement authorities.
4. Against this background, the interaction between competition enforcement and anticorruption policy has become increasingly important in Ukraine, particularly in the context of wartime public spending and reconstruction efforts.
5. This contribution examines the legal, institutional, and practical aspects of the relationship between corruption and competition in public procurement in Ukraine, with particular attention to enforcement practices and interagency cooperation.

2. Legal Framework of Public Procurement and Digital Procurement Platform

6. The legal framework governing public procurement in Ukraine is primarily established by the Law of Ukraine “On Public Procurement”, which regulates the procurement of goods, works, and services for state and local government needs. The Law aims to ensure transparent and efficient procurement procedures, promote competition, and prevent corruption in the use of public funds.
7. A central element of the Ukrainian procurement system is the Prozorro electronic procurement platform, through which public procurements are conducted electronically. Prozorro is based on the principles of openness, equal access, and digitalisation, and operates under the “everyone sees everything” principle, ensuring broad public access to procurement information.
8. The system contains centralised information on public procurement procedures conducted in Ukraine and provides open access to tender documentation, bids, procurement decisions, and other related materials. Prozorro also includes a long-term electronic data storage system, ensuring the preservation of procurement-related information and documents for oversight and enforcement purposes.

9. The introduction of Prozorro has significantly increased transparency in public procurement and strengthened public oversight over the spending of public funds.

10. At the same time, practical experience demonstrates that transparency alone does not fully eliminate corruption risks or anticompetitive conduct in procurement procedures. As a result, the effectiveness of the procurement system depends not only on transparency mechanisms but also on effective enforcement of competition and anticorruption legislation.

3. The Concept of Corruption and Legal Liability

11. The Law of Ukraine “On Public Procurement” establishes the general principles of liability for violations of public procurement legislation and identifies a broad range of actors responsible for compliance with procurement rules, including contracting authorities, members of review bodies, and financial control institutions. Liability may arise, in particular, in cases involving procurement procedures conducted in violation of legal requirements or the unlawful conclusion of procurement contracts.

12. At the same time, Ukrainian legislation does not contain a separate legal definition of “corruption in public procurement.” Instead, the general definition of corruption provided by the Law of Ukraine “On the Prevention of Corruption” applies to procurement-related conduct. Under this approach, corruption broadly covers the misuse of official powers or related opportunities for the purpose of obtaining undue benefits, as well as the offering or provision of such benefits.

13. The Ukrainian anticorruption framework applies to a wide range of public and private actors, including public officials, officials of public-law entities, and persons performing managerial or administrative functions in private companies. Corruption-related violations may entail criminal, administrative, disciplinary, or civil liability depending on the nature of the offense.

14. In practice, criminal liability plays the central role in addressing corruption in public procurement. The Criminal Code of Ukraine establishes liability for a range of corruption-related offenses, including bribery, abuse of office, illicit enrichment, and other offenses connected with the misuse of public authority. Liability may apply both to officials of contracting authorities and, in certain circumstances, to representatives of private companies involved in procurement procedures.

15. At the same time, Ukraine does not maintain separate official statistics specifically concerning corruption offenses in public procurement. Such cases are generally recorded under broader categories of corruption-related criminal offenses, which complicates the assessment of the overall scale of corruption risks in the procurement sector.

16. The most serious and socially significant corruption cases fall within the jurisdiction of the High Anti-Corruption Court, reflecting the institutional specialisation of Ukraine’s anticorruption enforcement system.

4. Institutional Framework for Combating Corruption

17. Ukraine’s institutional framework for combating corruption is based on a system of specialised and general law enforcement bodies with differentiated competences depending on the nature and gravity of the offense.

18. The National Anti-Corruption Bureau of Ukraine (hereinafter – NABU) is responsible for investigating high-level corruption and corruption-related criminal offenses, particularly those involving senior public officials or significant financial damage to the state. Procedural supervision and prosecution in such cases are carried out by the Specialized Anti-Corruption Prosecutor’s Office. This institutional model is intended to ensure independence and specialisation in the investigation and prosecution of complex corruption cases.

19. Criminal proceedings investigated by NABU are adjudicated by the High Anti-Corruption Court, which provides specialised judicial review in corruption-related cases. The establishment of specialised anticorruption institutions has become one of the central elements of Ukraine’s broader anticorruption reform framework.

20. Other corruption-related offenses are investigated by general law enforcement authorities, including the National Police of Ukraine, the State Bureau of Investigations, and, in certain cases, the Economic Security Bureau of Ukraine. Such cases are generally considered by courts of general jurisdiction. As a result, Ukraine operates a parallel system of specialised and general anticorruption enforcement.

21. Pre-trial investigations and judicial proceedings concerning corruption offenses are conducted under the general rules established by the Criminal Procedure Code of Ukraine. While this approach ensures procedural consistency across criminal proceedings, it may also limit the flexibility of enforcement authorities in addressing complex corruption schemes, particularly those involving coordinated conduct between public officials and private market participants.

5. Protection of Economic Competition in Public Procurement

22. The Antimonopoly Committee of Ukraine (hereinafter – AMCU) plays a central role in protecting competition in public procurement. Under the Law of Ukraine “On the Antimonopoly Committee of Ukraine,” the AMCU is a state authority with special status responsible for ensuring the protection of economic competition, including in procurement markets. This special status is intended to safeguard the institutional independence of the authority and its specialised role in competition enforcement.

23. The AMCU is responsible for overseeing compliance with competition legislation and for preventing, detecting, and terminating violations of competition law. In the field of public procurement, its powers include the investigation of anticompetitive conduct, the review of competition cases and complaints, and the adoption of binding decisions and sanctions.

24. One of the main categories of competition violations in public procurement involves anticompetitive concerted actions aimed at distorting the outcome of tenders, auctions, and other procurement procedures. Such conduct represents a significant threat to effective competition and may undermine the efficient use of public funds.

25. In practice, bid-rigging often involves coordination between bidders regarding pricing, market allocation, submission of tender documents, or other aspects of participation in procurement procedures. Even where formal competition exists, such coordination may create only the appearance of competitive bidding while eliminating genuine rivalry between participants.

26. Under Ukrainian competition law, companies found to have engaged in anticompetitive concerted actions may be subject to fines of up to 10% of their annual turnover. In addition, in accordance with the Law of Ukraine “On Public Procurement”,

undertakings involved in bid rigging shall be prohibited from participating in public procurement procedures for three years. These sanctions are intended to ensure both deterrence and the protection of competitive procurement processes.

6. Cooperation between the AMCU and Law Enforcement Agencies

27. The Antimonopoly Committee of Ukraine cooperates with various law enforcement authorities, including the National Police of Ukraine, prosecution authorities, the State Bureau of Investigations, the Security Service of Ukraine, and NABU, particularly in cases involving possible anticompetitive conduct in public procurement.

28. In practice, information relevant to competition investigations is often obtained during criminal proceedings concerning corruption offenses or the misuse of public funds in procurement procedures. Such cases may involve allegations of embezzlement, abuse of office, or unlawful acquisition of state property by officials of contracting authorities.

29. At the same time, Ukrainian criminal procedure legislation imposes significant restrictions on access to pre-trial investigation materials. Under the Criminal Procedure Code of Ukraine, information from ongoing criminal investigations may be disclosed only with the written authorization of the investigator or prosecutor and only within the limits defined by them. As a result, the AMCU may use and disclose such materials solely with prior approval from the relevant investigative authority.

30. Where authorization is granted, materials from criminal proceedings may be used by the AMCU in statements of objections, decisions in competition cases, access-to-file procedures, and the publication of final decisions. In practice, materials provided by law enforcement agencies – particularly NABU – often include evidence of coordination among bidders, such as communications, information exchanges, or other interactions related to participation in procurement procedures.

31. At the same time, information concerning possible corrupt arrangements between contracting authorities and individual companies is not typically transferred to the AMCU unless it directly relates to anticompetitive concerted actions among bidders. This reflects the institutional separation between corruption enforcement and competition enforcement in Ukraine.

32. Although cooperation between enforcement authorities has gradually intensified in recent years, practical challenges remain regarding access to evidence, information sharing, and the coordination of parallel investigations. These limitations may complicate the detection of complex procurement schemes involving both corruption and bid rigging.

7. Investigative Practices

7.1. Illustrative Enforcement Cases

7.1.1. The Pipe Procurement Case

33. An illustrative example of cooperation between the Antimonopoly Committee of Ukraine and the National Anti-Corruption Bureau of Ukraine involved an investigation into anticompetitive concerted actions related to two public procurement procedures for the purchase of pipes.

34. The case originated from materials obtained by NABU during a pre-trial criminal investigation concerning possible unlawful conduct in the procurement process. The information provided by NABU subsequently served as the basis for the AMCU to initiate a competition investigation. In accordance with Ukrainian procedural rules, the AMCU obtained authorization to use and disclose relevant materials from the criminal proceedings in its competition case.

35. The evidence collected during investigative and covert investigative activities indicated coordinated conduct between the bidders during the preparation and submission of tender proposals. In particular, electronic correspondence, call records, and electronic messages demonstrated communication between individuals connected to the participating companies and suggested coordination of their behaviour during the procurement procedures.

36. Messages exchanged through electronic messaging applications played a particularly important role in establishing the existence and mechanics of the collusive arrangement. These materials enabled the AMCU to reconstruct the bid rigging arrangements and identify the participants' respective roles. Additional evidence was also gathered independently by the AMCU.

37. Following its consideration of the case in 2024, the AMCU concluded that the companies had engaged in anticompetitive concerted actions aimed at distorting the outcome of the procurement procedures. The undertakings involved were fined up to 10% of their annual turnover and were additionally prohibited from participating in public procurement procedures for a period of three years.

38. The case illustrates the practical importance of cooperation between competition authorities and anticorruption bodies in detecting bid-rigging schemes, particularly where key evidence is obtained through criminal investigative powers unavailable within ordinary competition proceedings.

7.1.2. The First-Aid Kits Procurement Case

39. Another example concerns a case involving anticompetitive concerted actions between two companies aimed at distorting the outcome of a public procurement procedure for first-aid kits conducted by a government authority.

40. The relevant information was transferred to the AMCU by the NABU, which had obtained the materials during a pre-trial criminal investigation. The AMCU subsequently received the necessary procedural authorization to use and partially disclose the materials from the criminal proceedings.

41. The evidence indicated that one of the companies participated in the tender primarily to ensure the formal appearance of competition, while the participants coordinated their conduct throughout the procurement procedure. The materials further demonstrated that one bidder assisted another in preparing tender documentation, including obtaining supporting documents from manufacturers and suppliers.

42. Additional evidence consisted of documents and electronic materials seized during investigative activities conducted at company premises and private residences associated with the individuals involved. Electronic correspondence between the relevant persons confirmed that the participants coordinated their actions in preparation for the tender and that the winner of the procurement procedure had effectively been predetermined before bids were submitted.

43. The investigation also established that one participant reviewed another bidder's proposal to ensure compliance with the tender requirements and avoid disqualification. Coordinated conduct was further reflected during the electronic auction itself, where the bidders lowered prices according to prior arrangements, thereby creating only the appearance of competitive bidding.

44. A notable feature of the case was the absence of direct corporate or financial links between the defendants, which operated in different regions of Ukraine. In practice, this significantly complicated the detection of collusion and illustrates the importance of evidence obtained through criminal investigative mechanisms.

45. Following its review of the case in 2025, the AMCU concluded that the companies had engaged in anticompetitive concerted actions and imposed fines of up to 10% of their annual turnover. The undertakings were also prohibited from participating in public procurement procedures for a period of three years.

46. The case demonstrates the evidentiary significance of materials obtained during criminal proceedings, particularly electronic correspondence, in uncovering complex bid-rigging arrangements and identifying the mechanisms through which collusive schemes operate. At the same time, the AMCU's decision is currently being challenged before the courts, and the judicial proceedings remain ongoing.

8. Types of Liability and Their Interrelationship

47. The Ukrainian system of liability in public procurement has a clear distinction between competition law liability for anticompetitive conduct and criminal liability for corruption offenses. Although these regimes may apply to related conduct, they operate largely independently from one another, which has important implications for enforcement effectiveness.

48. One of the main practical challenges concerns access to evidence. Materials from criminal investigations may be transferred to the Antimonopoly Committee of Ukraine only with the prior authorization of an investigator or prosecutor and only where disclosure does not prejudice the criminal proceedings. In practice, such materials are transferred relatively infrequently, despite their potential importance for competition investigations.

49. This limitation significantly affects the detection of bid-rigging, particularly where collusion between bidders is combined with corrupt conduct involving contracting authorities or public officials. In many cases, the most persuasive evidence – including communications between participants or evidence of coordinated behaviour – is obtained through criminal investigative powers that are unavailable within ordinary competition proceedings.

50. At the same time, corruption investigations and competition investigations differ both in their legal nature and in the categories of persons subject to liability. Competition law liability primarily applies to companies involved in anticompetitive conduct, whereas criminal liability generally concerns individuals, including public officials and, in certain circumstances, representatives of private companies.

51. Although this distinction is legally justified, it may also contribute to fragmentation in enforcement practice. The absence of fully coordinated or parallel investigations can complicate the detection of complex procurement schemes involving both bid rigging and corruption.

52. Under Ukrainian competition law, the principal sanction for anticompetitive concerted actions is a fine of up to 10% of a company's annual turnover. Additional personal sanctions against company executives are generally not provided within the competition law framework. By contrast, criminal legislation provides for a broader range of sanctions for corruption offenses, including imprisonment, fines, confiscation of assets, and, in exceptional cases, criminal law measures against legal entities.

53. Accordingly, competition law and criminal law pursue different objectives: competition law is aimed at protecting market competition and ensuring fair procurement procedures, while criminal law focuses on combating corruption and abuse of public authority.

54. The concurrent application of these legal regimes does not violate the *ne bis in idem* principle, as they address different legal interests and different forms of unlawful conduct. Nevertheless, the formal separation between these systems does not always reflect the economic reality of procurement violations, where collusion among bidders and corrupt conduct by public officials may form part of a single scheme.

55. As a result, the effectiveness of Ukraine's enforcement framework depends significantly on the quality of cooperation between competition authorities, anticorruption institutions, and law enforcement agencies. Strengthening mechanisms for information sharing and improving access to evidence obtained during criminal proceedings could substantially enhance the ability of enforcement authorities to detect and prove complex procurement-related violations.

9. Scope of Application of the Leniency Program

56. Ukraine has established a leniency program as an important instrument for detecting and terminating anticompetitive concerted actions. However, the program applies exclusively within the framework of competition law and does not extend to criminal liability for corruption offenses.

57. The legal basis for the program is set out in Article 52-1 of the Law of Ukraine "On the Protection of Economic Competition," which provides the possibility of full or partial immunity from liability for undertakings that voluntarily disclose their participation in a cartel and provide evidence of significant value to the investigation.

58. The procedural aspects of the program are regulated by secondary legislation adopted by the Antimonopoly Committee of Ukraine in 2023. The updated framework reflects Ukraine's broader efforts to align its competition enforcement practices with international standards, including approaches developed within the European Union and recommendations of international organisations.

59. At the same time, practical experience suggests that the leniency mechanism remains underutilised in cases connected with criminal investigations. In proceedings initiated based on materials transferred from law enforcement authorities, undertakings have generally not relied on the leniency program. This may reflect concerns regarding legal uncertainty and the potential risk of parallel criminal liability.

60. A key structural issue is the absence of coordination between the competition law leniency regime and mechanisms for exemption from criminal liability under Ukrainian criminal law. Cooperation with the competition authority does not provide immunity from criminal prosecution, even where the undertaking voluntarily discloses collusive conduct and cooperates with the investigation.

61. As a result, the current framework may reduce incentives for companies to self-report complex procurement-related cartels that involve elements of corruption or conduct potentially subject to criminal investigation. From a policy perspective, this raises broader questions regarding the interaction between competition enforcement and anticorruption mechanisms in hybrid procurement cases.

10. Notification by the AMCU to Prosecution Authorities and Other Government Agencies

62. The Antimonopoly Committee of Ukraine maintains ongoing cooperation with prosecution authorities and other state institutions in order to protect the state's interests in the areas of economic security and competition enforcement.

63. In practice, the AMCU's decisions and case materials are of considerable evidentiary and analytical value for law enforcement authorities. Such materials are used both in court proceedings aimed at recovering damages caused to the state and in criminal investigations, as they may contain factual findings regarding coordinated conduct, mechanisms used to distort procurement procedures, and other information relevant to pre-trial investigations. The use of AMCU materials may therefore facilitate the identification of violations, the establishment of an evidentiary basis, and the effective protection of state interests in judicial proceedings.

64. An important development in interagency cooperation was the introduction in 2024-2025 of a mechanism for annual reconciliation of information concerning relevant investigations between the AMCU, prosecution authorities, and the Office of the Prosecutor General. This mechanism is intended to improve information exchange, systematise the use of AMCU materials in related proceedings, and promote a more coordinated enforcement approach. More broadly, it reflects an increasing emphasis on institutional cooperation between authorities with different enforcement mandates.

65. In addition to its competition enforcement functions, the AMCU also acts as the public procurement appeals body in Ukraine. In this capacity, it reviews complaints concerning tender documentation, procurement decisions, and the results of procurement procedures, thereby providing an additional mechanism for protecting the rights of market participants and identifying potential violations.

66. The review of procurement complaints also involves interaction between the AMCU and law enforcement or regulatory authorities. Where the AMCU identifies indications of administrative or criminal offenses – including document falsification or other abuses – the relevant materials may be transferred to competent authorities for further action.

67. Enforcement practice demonstrates the growing importance of this mechanism. During 2025, the AMCU referred 35 complaints to law enforcement authorities and submitted more than 100 reports to the state financial control authority. This trend indicates the increasing role of procurement review procedures not only as a dispute resolution mechanism, but also as a source of information regarding potential violations in public procurement.

68. Accordingly, the AMCU's role in public procurement extends beyond traditional competition enforcement and includes an important preventive and supervisory function within the broader procurement integrity framework.

11. Conclusions

69. Ukraine has developed a comprehensive and institutionally advanced public procurement framework based on the principles of transparency, openness, and digitalisation. The introduction of the Prozorro electronic procurement system has significantly increased public access to procurement information and strengthened transparency in the use of public funds.

70. At the same time, enforcement practice demonstrates that transparency alone is insufficient to eliminate corruption risks or anticompetitive conduct. Rather, such practices may evolve into more sophisticated forms, including schemes that combine collusion among bidders with corrupt conduct involving contracting authorities or public officials.

71. In this context, effective cooperation between competition authorities, anticorruption institutions, and law enforcement agencies plays a critical role. The use of materials obtained during criminal investigations, together with interagency information sharing, may substantially improve the ability of authorities to detect and prove complex procurement-related violations.

72. Further strengthening enforcement effectiveness in Ukraine will require deeper institutional cooperation, improved mechanisms for access to evidence, and wider use of data-driven analytical tools for detecting collusion and procurement irregularities. In particular, expanding information exchange between law enforcement authorities and the Antimonopoly Committee of Ukraine, as well as further developing analytical capabilities within the Prozorro system, could enhance the overall resilience and integrity of public procurement enforcement.