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Competition in Energy Markets – Note by Ukraine

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More documents related to this discussion can be found at
www.oecd.org/competition/competition-in-energy-markets.htm

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Ukraine

1. Ukraine's energy markets continue to function despite Russia's massive attacks on Ukraine's energy infrastructure.
2. Changes in the structure of markets, regulation and enforcement in these markets are quite dynamic and are designed mainly to stabilize the situation in the respective markets.
3. Below we present the main changes that have taken place in the energy markets of Ukraine in previous years and the situation in the relevant markets today.

1. The electricity markets

1.1. General overview

4. Electricity is one of the strategic, essential goods, without the proper balance of which the smooth operation of other sectors of the economy and the way of life which is common for society are impossible.
5. Therefore, the development of competition in the energy markets, in particular, the protection and development of competition in the electricity market, is constantly in the focus of the AMCU's attention.
6. The legal, economic and organizational principles of the functioning of the electric energy market are defined by the Law of Ukraine “On the Electric Energy Market”, according to which the wholesale electric energy market consists, in particular, of the market of bilateral contracts, the “day-ahead” market, the intraday market and the balancing market.

1.2. Connection to ENTSO-E

7. The integration of the United Energy System (UES) of Ukraine into the pan-European energy system ENTSO-E is provided for by the Association Agreement between Ukraine and the EU. (*Clause C of Article 338*).
8. At first, starting from July 1, 2003, only a part of the energy system of Ukraine - the “Island of Burshtynska TPP” (Burshtynska TPP, Kaluska TPP and Tereble-Rytska HPP, as well as mainlines, interstate and distributional networks, in total 4% of the total production and consumption in Ukraine) worked synchronously with the network of continental Europe. At the same time, the “island” was physically disconnected from the main part of Ukraine's energy system. Electricity was exported from the “island” to Hungary, Slovakia, and Romania. With the introduction of a new electricity market model in Ukraine, starting from July 1, 2019, it became possible to import electricity into the “island's” trading zone, as well as into the main part of Ukraine's UES (from Belarus, Russia, and Moldova).
9. By resolution of the NEURC (energy regulator) as of June 27, 2019 No. 1307, two separate zones within the borders of Ukraine, defined by SE “NEC” Ukrenergo”, were approved.

- (a) trade zone “Island of Burshtynska TPP”;
 - (b) trade zone “UES of Ukraine”.
10. The isolated trade zone “Island of Burshtynska TPP” operated in an isolated mode relative to the rest of the UES of Ukraine and in a parallel mode as part of the association of electric energy systems of continental Europe ENTSO-E, which allowed importing and exporting electric energy from the countries of the European Union (Hungary, Slovakia and Romania).
11. **Additionally. Practice of AMCU.** Taking into account that 83% of the electric energy produced on the market in the trade zone “Island of Burshtynska TPP” was generated by “DTEK Zahidenergo” JSC, while the shares of export/import are insignificant and do not have a significant impact on the market structure, the specified undertaking contained structural features of a monopoly (dominant) position of the electricity market in individual trade zones. At the same time, the existence of a monopoly position sometimes prompts undertakings to abuse it. Thus, in particular, the Decision of the AMCU No. 780 as of 15.12.2020 recognized that the DTEK Group represented by DTEK Zahidenergo JSC and D.Trading LLC in July - October 2019 occupied a monopoly (dominant) position on the regional commercial sales market of electric energy and balancing during the hours of minimum and maximum load within the trading zone “Island of Burshtynska TPP”, and their actions, determined by the decision, are a violation of the legislation on the protection of economic competition in the form of abuse of a monopoly (dominant) position. Fines have been imposed on the DTEK Group for the committed violations, the total amount of which exceeds UAH 275 million or EUR 8 million (EUR exchange rate as of December 15, 2020 - UAH 33,888). A legal appeal is currently underway.
12. As part of preparations for the synchronization of the unified energy system of Ukraine (UES) with the energy system of continental Europe ENTSO-E, on February 24, 2022, the First stage of testing of the energy system of Ukraine began in an area, isolated from the energy systems of Russia, Belarus and the ENTSO-E network, just a few hours before the start of the war. At that time, the UES of Ukraine had already been merged with the “Island of Burshtyn TPP”, the two parts of the energy system of Ukraine are currently working synchronously.
13. It is obvious that one of Russia's plans was to disable the Ukrainian energy system and disrupt synchronization with ENTSO-E. Russian occupying forces seized the Zaporizhzhya NPP, the Kakhovka HPP, destroyed the Okhtyrsk TPP, and constantly shelled the energy infrastructure. Ukrainian energy companies had to repair damaged lines immediately after the fighting ended; often - many times eliminating damage in the same areas.
14. The Ukrainian energy system was supposed to work in isolated mode for 3 days - but it worked for 21 days, proving to Ukrainians and our European partners the reliability and stability of the national energy system. This paved the way for its merger with ENTSO-E, which took place a year ahead of schedule.
15. On March 16, 2022, one of the key events of Ukrainian energy took place: the national energy system merged with the European Network of Transmission System Operators for Electricity (ENTSO-E).
16. On March 30, the first export of electricity from Ukraine to Europe after synchronization began. At the same time, export volumes gradually increased after the monthly ENTSO-E assessment of the impact on the European energy system. Since July 30, export volumes have increased 2.5 times from the initial level, Ukrainian electricity is supplied to Romania and Slovakia (125 MW each).

17. Ukraine also exported about 210 MW to Poland. The memorandum signed by the Ministers of Energy of Ukraine and Poland envisages continued cooperation on increasing the carrying capacity of interstate crossings. In the future, exports may increase to 1 GW.

18. Another 200 MW was exported from Ukraine to Moldova. (The amount of bandwidth of the Ukraine-Slovakia line is 600 MW).

19. The total amount of distributed bandwidth capacity was more than 1000 MW (Poland – 210; Moldova – 600; Romania and Slovakia – 300). Technically, the Ukrainian energy system could provide up to 1,690 MW of power for export. After the implementation of additional technical measures, the capacity for the sale of electricity abroad could increase to 6 GW.

20. **For reference.** During March-August 2022, from the territory of Ukraine, electric energy was exported in four directions - Poland, Moldova, Romania, Slovakia.

21. In the period from March to August of this year, most of the electricity was exported to Poland (54% of all exports), another 26% - to Moldova, 11% - to Romania, 9% - to Slovakia.

22. Synchronization with ENTSO-E strengthens the energy security of Ukraine and the entire region. Ukrainian electricity is already helping Europe get rid of its dependence on Russian energy carriers by reducing the use of gas in the production of electricity. In addition, we would like to note that according to the order of the Ministry of Energy of Ukraine, the energy system of Ukraine will not return to parallel operation with the combined energy grid of the Russian Federation and the Republic of Belarus.

23. Synchronized operation of the energy systems of Ukraine and Europe will contribute to the achievement of the climate goals of the European Union. After all, today the Ukrainian energy mix consists of 70% of electricity produced without a carbon footprint - by nuclear and renewable generation capacities.

24. The next step after the technical synchronization of the energy systems of Ukraine and continental Europe is the synchronization of the European and Ukrainian energy markets.

25. At the same time, unfortunately, it should be noted that the missile attacks that hit the heat energy generation and electrical substations forced Ukraine to stop exporting electricity from October 11, 2022, in order to stabilize its own energy system.

1.3. Regulation of electric energy markets

26. In addition to the imposition on exporters of special obligations (PSO), amendments to the Resolution of the Cabinet of Ministers of Ukraine on PSO No. 483 as of June 5, 2019, extended the effect of fixed prices for 1 kWh of electricity for household consumers on equal to UAH 1.44 (consumption up to 250 kWh) and UAH 1.68 (over 250 kWh) till October 31, 2022. In addition, the Government, by Resolution No. 838 as of July 22, 2022, applied the PSO mechanism to “NEC” Ukrenergo” PJSC, obliging it to provide targeted interest-free return assistance to “Ukrvugillia” SE in the amount which is required for the purchase of coal products, in the required volume of up to 1 million tons at the market price, but no more than UAH 2.5 billion, for the needs of electricity producers who operate TPPs and CHPs. The aid must be returned by June 1, 2023.

27. Along with this, the Law of Ukraine as of 29.07.2022 No. 2479-IX “On the peculiarities of regulating relations in the natural gas market and in the field of heat supply during martial law and further recovery” introduced changes in the functioning of the electricity market, in particular, till April 1, 2023, the obligation of producers to sell

electricity under bilateral contracts exclusively at electronic auctions was extended; the period during which the functions of Supplier of Last Resort are entrusted without holding a competition has been extended until December 31, 2023; the period for holding a competition for the selection of universal service providers has been extended till July 1, 2023; the target direction of the funds received by the transmission system operator (“Ukrenergo”) from the distribution of bandwidth capacity of the interstate crossing has been changed, namely, the funds received as of July 31, 2022, are used for the following purposes:

1. 10% for maintenance and investment into the transmission system, debt repayment under contracts for access to bandwidth capacity of the interstate crossing;
 2. 45% for repayment of Transmission system operator`s (TSO) debt in the balancing market. Producers operating TPPs and CHPs are required to allocate such funds to purchase fuel or to carry out repair work to ensure the heating season of 2022/2023;
 3. 45% – for repayment of the TSO`s debt to the guaranteed buyer within the framework of the PSO mechanism. The guaranteed buyer is obliged to transfer such funds to nuclear and “green” generation in proportion to the debt.
28. Funds received by TSO from the distribution of bandwidth capacity of the interstate crossing from August 1, 2022 to January 1, 2023 are used for the following purposes:
- 50% – for repayment of TSO`s debt on the balancing market;
 - 50% – for the repayment of the debts of TSO under the PSO mechanism for renewable energy sources.

29. In addition, the mentioned law introduced changes in the activity of producers of electricity from renewable sources. Thus, RES producers are given the right to temporarily leave the balancing group of the guaranteed buyer. In addition, RES producers that do not receive promotions (for example, the “green” tariff) are given the right to conclude a contract with the consumer on the provision of a service to ensure the stability of the price of electricity (under this contract, the producer will purchase a service from the consumer if the price of electricity energy on the market of Ukraine exceeds the upper level of the indicator set by the parties, and the consumer will purchase the service from the producer if the price of electric energy on the market of Ukraine is lower than the lower level of the corresponding indicator). These instruments stimulate RES producers to work on a market basis, without state support in the form of a “green” tariff.

1.4. Regarding the monitoring of markets and prices in the energy markets.

30. According to Clause 13 of Part one of Article 17 of the Law of Ukraine “On the National Commission for State Regulation in the Energy and Utilities Sectors”, the Regulator (NEURC) monitors and analyzes markets in the energy and utilities sectors. In addition, the Regulator has the right to set limit prices (temporary minimum and/or maximum price limits) in the day-ahead market, the intraday market and the balancing market for each trading zone in accordance with the methodology determined by the Regulator. (The regulator has set limit prices since the start of the new market model, which are adjusted from time to time).

31. The Regulator publishes reports on the monitoring of electricity markets for each quarter. The monitoring report consists of sections that reflect information on the production, transmission, resale (trading activity) of electric energy, export-import operations, activities of the guaranteed buyer and market operator, the work of organized segments of the electric energy market, the market of bilateral contracts and the market of

auxiliary services , wholesale electricity prices, electricity market liquidity, mergers and competition in the electricity market, as well as market power indicators.

1.5. Electricity generation from renewable energy sources (RES) and “green” tariff

32. Currently, the AMCU is conducting a study on the definition of the commodity boundaries of the market, where the relationship between the State Enterprise “Guaranteed Buyer” and RES producers occurs during the purchase and sale of electricity under the “green” tariff, during which the following is established.

33. SE “Guaranteed Buyer” was created, in particular, to fulfill state guarantees regarding the purchase of all electric energy produced at electric power facilities using alternative energy sources (and with the use of hydropower - produced only by micro-, mini- and small hydropower plants), according to the set “green” tariff or at the auction price, to perform the functions of a guaranteed buyer of electricity.

34. At the same time, the “green” tariff is a special tariff, according to which electric energy produced at electric power plants from alternative energy sources is purchased. The establishment of the “green” tariff is carried out by the NEURC (the Regulator).

35. The “green” tariff is set for each undertaking that produces electricity from alternative energy sources, for each type of alternative energy.

36. Thus, producers of electric energy, which have a “green” tariff, have the right to sell electric energy produced at electric power facilities using alternative energy sources at the “green” tariff, taking into account the premium to it, to the guaranteed buyer.

37. However, RES producers have the right to sell such electric energy, under bilateral contracts, on the “day-ahead” market, on the intraday market and on the balancing market at the prices established in the relevant market segments, or at the “green” tariff, at the auction price established in accordance with the [Law of Ukraine](#) “On Alternative Energy Sources”.

38. In this case, in the event that RES producers sell electric energy produced from alternative energy sources on other segments of the electric energy market, the relationship between them and SE “Guaranteed Buyer” regarding the purchase and sale of electric energy at the “green” tariff is terminated.

39. Thus, in Ukraine, RES producers have a choice whether to sell electric energy produced from alternative energy sources to SE “Guaranteed Buyer” at the “green” tariff with premium for it, or on other organized segments/outside organized market segments at prices which are set at the time of sale/purchase in such markets.

40. It should be emphasized that RES producers did not switch to other market segments.

1.6. Prospects for increasing the share of wind and solar energy and the impact on competition in electricity markets.

41. In Ukraine, the purchase of **all** electrical energy produced at power plants using alternative energy sources is carried out by a single undertaking - SE “Guaranteed Buyer” according to the “green” tariff established by the Regulator.

42. The increase in electricity production from alternative sources thus has a limited impact on competition among electricity producers, since RES producers do not participate in the sale of electricity on a competitive basis (bilateral contracts, “day-ahead”, intraday and balancing markets). However, with the increase in production from alternative sources,

the share of which was 7.51% of the total volume of electricity production in 2021, RES producers reduce the amount of demand that can be satisfied by other producers, thereby increasing competition between producers of electricity that sell it on competitive principles.

43. However, in connection with the military aggression of the Russian Federation against Ukraine, it is currently impossible to assess the impact of RES production on competition, given that a large amount of green generation is located in the territory of hostilities and/or occupied territories, in particular, one of the largest producers of RES Wind Power Plant (WPP) “Aquilon” with a capacity of 600 MW, WPP “EuroCape Ukraine I” (500 MW), WPP “Overyanivska” (300 MW), WPP “Botievska” (200 MW).

1.7. Interaction with the Regulator.

44. As transitional processes continued to take place in the electricity market in recent years, which primarily consisted in the improvement of the regulatory and legal acts regulating the activity of the electric energy market by the relevant Ministry and the Regulator, the AMCU processed more than 63 regulatory and legal acts in 2021 alone, of which 41 were approved, 19 were not approved and 5 were proposed to be amended.

1.7.1. An example of interaction with Regulator

45. Based on the results of the development of the draft resolution of the NEURC “On Approval of Changes to the Market Rules”, which was submitted to the AMCU for approval, the AMCU repeatedly provided the Regulator with comments and suggestions regarding the improvement of certain norms of the specified legal act, which, in the AMCU's opinion, could have a negative impact on competition in the electricity market.

46. Thus, the AMCU drew attention to the fact that the proposed changes regarding the consideration of the fee for the imbalance of electric energy in the tariff of the TSO for dispatching (operational and technical) management services under certain conditions may lead to an increase in the tariff of the TSO, which in turn may lead to an increase tariff of Distribution System Operators, providers of universal services, and, accordingly, final tariffs for consumers.

47. During the finalization of the NEURC's Amendments to the Market Rules, the comments and suggestions of the AMCU and market participants were taken into account, which ultimately led to the improvement of the mechanism for providing dispatcher commands for loading and unloading outside the established order, which are provided to TSO for the need to comply with operational safety limits and maintain balance in the power system for settlement of system restrictions.

48. However, the approval of amendments to the Market Rules led to the improvement of the financing mechanism of the UA-1 subaccount, which made it possible to optimize the costs of the TSO related to the purchase of auxiliary services on the electricity market, and to minimize the financial burden on market participants, in particular, on electricity suppliers and universal service providers.

1.8. An example of AMCU law enforcement in the market of electric energy distribution services.

49. The Decision as of 07.10.2021 No. 63/70-r/k, which recognized the actions of “Rivneoblenergo” PJSC which consisted, in particular, in making unreasonable demands to consumers regarding the replacement of measuring equipment, namely, the replacement

of current transformers of the accuracy class 0.5S with current transformers accuracy class 0.2S in the event of a decrease in the amount of electrical energy consumption by consumers (including in the case of underloading of current transformers), which is not provided for by the current legislation, and regarding the failure to take into account the data provided by consumers about the amount of electrical energy consumption according to the indications of commercial accounting tools, and determining the amount of consumed electrical energy at consumer facilities by calculation (based on the minimum allowable load level of the accounting scheme) and providing this data to consumers' electricity suppliers for billing for consumed electrical energy, which is also contrary to current legislation, is a violation of the legislation on the protection of economic competition in the form of monopoly position abuse on the market of electric power distribution services.

2. Regarding natural gas markets

2.1. General overview.

50. Natural gas markets are of strategic importance for the economy of the state, and are also socially important.

51. The AMCU constantly monitors the actions of natural gas market participants for compliance with the legislation on the protection of economic competition, and recent years have not been an exception.

52. The introduction of a full-scale natural gas market involves the intensification of competition between natural gas suppliers in order to gain advantages through their own achievements, as a result of which natural gas consumers have been given the opportunity to choose between several natural gas suppliers.

53. However, taking into account various factors, legal regulation, it is possible to conventionally divide natural gas markets into natural monopoly, competitive, potentially competitive and competitive markets.

54. The natural monopoly markets include: natural gas transportation market (the monopoly position on the relevant market is occupied by the “Gas Transmission System Operator of Ukraine” LLC), natural gas storage market (the monopoly position on the relevant market is occupied by the “Ukrtransgaz” JSC), and natural gas distribution markets (the monopoly position on the natural gas distribution markets is occupied by 46 undertakings - operators of the distribution system (“Oblgaz” companies) within the territory of their activity, i.e. the locations of the gas transportation system that are owned by them).

55. Taking into account that a significant number of undertakings that have market power operate on natural gas markets, the main violations on which the AMCU's bodies focused their attention in recent years were exactly the violations by such undertakings of the legislation on the protection of economic competition in the form of abuse of monopoly (dominant) position provided for in Article 13 of the Law of Ukraine “On Protection of Economic Competition”.

56. The national market for the primary sale of natural gas. The main sources of supply of natural gas as a commodity to the Ukrainian market are its primary supply by gas production enterprises that produce natural gas on the territory of Ukraine, and undertakings that import natural gas.

57. An undertaking represented by “Naftogaz of Ukrain” NJSC, “UkrGasVydobuvannya” JSC and other undertakings connected with “Naftogaz of Ukrain” NJSC by relations of control, has signs of a monopoly (dominant) position on the national market of primary sale of natural gas. At the same time, Naftogaz Group carries out activities at various levels of natural gas distribution: from its extraction to supply to consumers.

58. If we talk about the natural gas supply markets, they include: the market for the supply of natural gas to industrial consumers, the market for the supply of natural gas to the population, and the market for the supply of natural gas to municipal heat energy enterprises.

59. The first 2 supply markets are competitive markets in which a significant number of undertakings operate, at the same time, the market for natural gas supply to municipal heat energy enterprises in 2021 was potentially competitive, given the fact that in such a market operate a significant number of undertakings, however, there are administrative barriers to changing the natural gas supplier due to the existence of debt to “Naftogaz of Ukraine” NJSC, which was incurred during the period of special duties imposed on the mentioned company.

60. Separately, it is necessary to highlight the market of wholesale sale (supply) of natural gas.

61. The share of the “Gas Supply Company Naftogaz Trading” LLC, which is part of the Naftogaz Group, in the market of wholesale sale (supply) of natural gas according to the results of 2020 and the first half of 2021 was more than 35%, which indicates the presence of structural features of a monopoly (dominant) position of “GSC Naftogaz Trading” LLC in the market of wholesale sale (supply) of natural gas. In addition, Naftogaz Group, which includes “GSC Naftogaz Trading” LLC, is the largest owner of natural gas resources produced on the territory of Ukraine.

62. Considering that vertical integration of the Naftogaz Group, “GSC Naftogaz Trading” LLC has stable access to the main resource (raw materials), compared to the limited access of competitors in the relevant market, which indicates that it has market power in the market of wholesale sale (supply) of natural gas.

2.2. Law enforcement practice of AMCU on gas markets

63. In 2021, the legislation regulating the activities of undertakings in the natural gas markets underwent certain changes, and in the first half of 2021, “GSC Naftogaz Trading” LLC was able to take advantage of such changes, therefore the AMCU paid special attention to determining the share of the relevant entity on the natural gas markets in the relevant period.

64. From May 1, 2021, annual gas tariffs for the population (household consumers) have been introduced. The prerequisite for this was the adoption of the NEURC’s Resolution as of 04.07.2021. No. 572, according to which natural gas suppliers are required to approve basic annual offers for the population for the period from 01.05.2021 to 30.04.2022.

65. At the end of March 2021, Naftogaz Group announced on its official website that it is ready to provide the opportunity to purchase gas to suppliers operating in the retail market for the population, so that they can create their own annual tariff plan. It was also reported that the main provisions of the annual contract of “GSC Naftogaz Trading” LLC contain uniform standard conditions for all gas suppliers to household consumers with a fixed annual price.

66. In order to provide natural gas, gas supply companies turned to “GSC Naftogaz Trading” LLC regarding the conclusion of a contract for the purchase and sale of natural gas. Taking into account that the contracts of “GSC Naftogaz Trading” LLC for the supply of natural gas, according to the market participants, contain discriminatory terms, applications on violations of the legislation on the protection of economic competition were submitted to the AMCU.

67. According to the results of the AMCU’s analysis of the information received during the review of applications, it was found that the actions of “GSC Naftogaz Trading” LLC, which has signs of a monopoly (dominant) position, could lead to a restriction of competition between undertakings that supply natural gas, which would be impossible under the conditions of existence of significant competition in the market.

68. In connection with the above-mentioned facts, at the end of the year, a submission was prepared to initiate a case review on the grounds that “GSC Naftogaz Trading” LLC committed a violation of the first part of Article 13 and Clause 2 of Article 50 of the Law of Ukraine “On Protection of Economic Competition” in the form of abuse of a monopoly (dominant) position on the market of wholesale (supply) of natural gas, which could lead to the prevention, elimination or limitation of competition, or the infringement of the interests of other undertakings or consumers, which would be impossible under the conditions of the existence of significant competition on the market.

69. As a result, at the beginning of 2022, the AMCU began consideration of case No. 128-26.13/4-22 on the grounds of violation of the legislation on the protection of economic competition by the Limited Liability Company “Gas Supply Company “Naftogaz Trading”.

70. It should be noted that changes in legislation affected not only natural gas suppliers, but also heat energy producers.

71. Thus, until May 20, 2021, “Naftogaz of Ukraine” NJSC, was entrusted with special duties regarding the supply of natural gas to enterprises that produce heat energy under the conditions and in the order determined by the Regulation on PSO No. 867.

72. After the expiration of the special duties of “Naftogaz of Ukraine” NJSC, “GSC Naftogaz Trading” LLC prepared a three-year contract for the supply of gas for heat energy producers and concluded such contracts with relevant undertakings. As of August 19, 2021, 480 heat producers have signed three-year gas supply contracts with “GSC Naftogaz Trading” LLC.

73. At the same time, the Antimonopoly Committee of Ukraine received appeals from municipal heat energy enterprises regarding their forced conclusion of contracts for the supply of natural gas, containing discriminatory conditions.

74. Having carried out an appropriate review, the AMCU found that during the conclusion of natural gas purchase and sale contracts with heat energy producers, “GSC Naftogaz Trading” LLC having structural signs of a monopoly (dominant) position on the market of wholesale (supply) of natural gas and using existing market power, established the following conditions for the sale of goods, which could not be established in the presence of significant competition on the market:

- the supply and use (offtake) of natural gas under this Agreement is carried out exclusively on the condition that the Consumer is not registered in the register of any other supplier of natural gas;
- The Consumer is obliged not to allow the use of natural gas under contracts concluded with other suppliers in the billing periods, in which this Contract is in effect without terminating it;

- if the Consumer intends to conclude a contract with another supplier, the Consumer must fulfill his obligations regarding natural gas payments to the Supplier, sign an agreement with the Supplier on the termination of this Contract from the first day of the next billing period;
- The Consumer loses the right until June 2024 (inclusive) to receive natural gas from the Supplier's resource at a fixed price determined by the Agreement.

75. Such terms of the contract contain signs of a violation of the legislation on the protection of economic competition and may lead to infringement of the interests of consumers, taking into account their right to freely choose a supplier of natural gas, including according to the price criterion.

76. In order to stop actions that contain signs of violations of the legislation on the protection of economic competition, to eliminate the causes of these violations, on October 7, 2021, the Antimonopoly Committee of Ukraine issued the following mandatory recommendations for review under No. 22-rk:

77. “GSC Naftogaz Trading” LLC has to stop actions that contain signs of violation of the legislation on the protection of economic competition in the form of establishing such conditions for the sale of goods that would be impossible to establish under the conditions of the existence of significant competition on the market, by reducing the conditions of natural gas supply contracts with producers of heat energy to the conditions of the Natural Gas Supply Rules.

78. “GSC Naftogaz Trading” LLC reported to the AMCU on the results of consideration of the recommendations in several stages.

79. Thus, thanks to the timely intervention of the AMCU, the Company, in accordance with the recommendations, developed an additional agreement to the contract on the supply of natural gas and sent it to all its counterparties - heat energy producers.

80. In additional agreement, all provisions that did not allow heat energy producers to choose any other supplier of natural gas and to enter into contracts with such suppliers for the purchase of natural gas, etc., are excluded.

81. It should be noted that the recommendations as of October 7, 2021, No. 22-rk were not the only recommendations that helped the AMCU to take timely measures to restore proper conditions of competition and avoid the prevention, elimination or restriction of competition in the natural gas markets.

82. As early as February 25, 2021, the Antimonopoly Committee of Ukraine provided the Chernihiv Regional State Administration with mandatory recommendations No. 4-rk regarding undertakings in the natural gas supply market. “Chernihivgaz Zbut” LLC appealed to the AMCU with a statement about violations of the legislation on the protection of economic competition conducted by the Chernihiv Regional State Administration.

83. During the review of the application, the AMCU established that in November 2020, the Head of the regional administration organized a meeting with the management of “GSC Naftogaz Trading” LLC. At the mentioned meeting, the possibility of reducing the amount of gas payments in bills for the population and businesses was discussed, consumers were offered to conclude a contract with “GSC Naftogaz Trading” LLC and to refuse the services of the current natural gas supplier in order to save up to 40%.

84. In addition, a Memorandum of Cooperation was signed between the Chernihiv Regional State Administration and “GSC Naftogaz Trading” LLC. As a result of taking the above-mentioned actions, “GSC Naftogaz Trading” LLC, compared to other suppliers, received advantages on the natural gas supply market in the Chernihiv Region.

85. Under these circumstances, the Antimonopoly Committee of Ukraine recommended the Chernihiv Regional State Administration to stop actions that contain signs of violation of the legislation on the protection of economic competition, in particular, bring the information on the choice of a natural gas supplier posted by the Chernihiv Regional State Administration on online platforms of the Internet in accordance with the requirements of the provisions of the Law of Ukraine “On the protection of economic competition”, in particular, by excluding information about the competitive advantage of “GSC Naftogaz Trading” LLC over other suppliers of natural gas. As well as, to inform the AMCU regarding this, within ten days from the date of receipt of the specified recommendations.

86. The Chernihiv Regional State Administration informed the AMCU about the implementation of the AMCU's recommendations in accordance with the established procedure.

87. In 2022, the structure of the markets has changed somewhat, in particular the structure of the natural gas supply market to the population.

88. In 2022, despite the martial law in Ukraine, the AMCU continues to monitor natural gas markets and undertakings operating on them.

89. Thus, on September 8, 2022, the AMCU initiated case No. 128-26.13/54-22 based on the presence in the actions of “Gas Transmission System Operator of Ukraine” LLC of violations of the legislation on the protection of economic competition in the form of abuse of a monopoly (dominant) position on the market of natural gas transportation via gas transportation system, through groundless and unjustified distribution of capacity, charging of fees for distributed and/or excess capacity at the point of exit from the gas transportation system to the gas distribution system of the “Hadyachgaz” PJSC, which has led or may lead to infringement of the interests of other undertakings or consumers, which would be impossible under the conditions of existence of significant competition in the market.

3. General conclusions

90. The energy markets of Ukraine have been in a state of war since 2014, therefore, from February 24, 2022, with a full-scale invasion of the territory of Ukraine, certain regulatory solutions have already been worked out in the territories of Ukraine, where active hostilities were previously conducted and temporarily occupied territories.

91. At the same time, the Ukrainian energy industry faced a list of new, even more threatening challenges, such as nuclear terrorism with the seizure of nuclear power plants, numerous damages to critical infrastructure - electricity and gas networks. Therefore, the process of regulatory changes to stabilize the industry continues to this day.

92. The challenges faced by Ukraine in connection with full-scale hostilities on the territory of our country are particularly tangible and serious for the energy sector. This applies both to the prompt restoration of infrastructure objects from the destruction caused by military actions, and to ensuring the passage of the autumn-winter heating period of 2022/2023, which is expected to be the most difficult for the entire European continent, as well as the strategic restoration and renewal of the energy industry in the context of the acquisition by Ukraine the status of a candidate for accession to the EU.

93. It is expected that not for every challenge, and not from the first try, it is possible to find the optimal answer. However, it is important to correctly define and capture strategic priorities, as well as their financial and economic capabilities and sources, so that the

development of competition, regulatory energy regulation and law enforcement are as predictable and transparent as possible for all energy market participants.