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Working Party No. 2 on Competition and Regulation

**Assessing and Communicating the Benefits of Competition Interventions – Note by
Ukraine**

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This document reproduces a written contribution from Ukraine submitted for Item 6 of the 75th meeting of Working Party 2 on 12 June 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/assessing-and-communicating-the-benefits-of-competition-interventions.htm>

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Ukraine

1. General overview

1. Ukraine's European integration aspirations have significantly changed the requirements and expectations of society and the business community regarding the provision of their rights and opportunities by the authorities. The demand for fairness and integrity has especially increased. Such social trends are expected in periods of sharp political or economic fluctuations, and in Ukraine they have been exacerbated by the war and its aftermath.
2. These trends are a powerful impetus for the modernization of Ukraine's government institutions, including improving the way they communicate and assess the impact of their activities.
3. The Antimonopoly Committee of Ukraine (AMCU) effectively responds to these public requests. At the same time, we have often encountered overstated or unrealistic expectations of society from the work of the AMCU. The reason for this was a poor understanding by some stakeholders of the AMCU's powers, tasks, and available tools. At the same time, unfulfilled public demands raise doubts about the effectiveness of the authorities and simultaneously create fertile ground for the activities of “dishonest players”.
4. Therefore, the AMCU focuses significant efforts on improving the ways of communication with the public, business community, and government authorities to enhance transparency and predictability in the AMCU's activities.

2. On the assessment of the AMCU's activities

5. **Publication of reports.** Mandatory publication of annual reports on the AMCU's activities is required by law. Such reports, in the form of a structured overview by market and area, with relevant comments from the Chair of the AMCU and its directors of the departments, are published annually by March 15. The publication of the report is not a formality for us. The AMCU strives to ensure that the information contained therein, despite the complexity of the subject matter, is understandable to any reader (use plain language), because we widely inform not only the authorities but also the public about the publication of the report.
6. The report contains, among other things, quantitative indicators of the AMCU's work, a list of our rulemaking initiatives and examples of key advocacy and enforcement activities. It is worth noting that the AMCU, in addition to the antitrust, also monitors and controls state aid, prevents violations in the field of unfair competition and is an appeal body in the field of public procurement. Therefore, our report also contains detailed information in these areas.
7. **Approaches to assessing the AMCU's activities.** We use a comparative analysis to conduct a quantitative assessment of our activities. The qualitative assessment is carried out by calculating the economic impact of the measures taken using the methodology based on the «Guide for assessing the impact of competition authorities' activities» OECD 2014.
8. Our impact assessment covers the areas of advocacy, enforcement, regulatory review, and merger control and concerted practices. When calculating impact, we assess both direct price effects and potential deterrent effects, i.e. we calculate the impact of

advocacy measures that encourage businesses to refrain from actions that may harm competition.

9. «Guide for assessing the impact of competition authorities' activities» OECD 2014 is a general recommendation. At the same time, the authors leave some issues to the discretion of competition authorities.

10. Therefore, it would be appropriate to note the AMCU's own methodological approaches, which for one reason or another are not included in the OECD methodology:

- assessment of the economic impact of exposing bid rigging in the amount of 10% of the expected/actual procurement value;
- assessment of the economic impact of measures aimed at stopping anticompetitive actions of the authorities;
- the economic impact is to be considered in the reporting year only after confirmation of the cessation of the violation (or after the commencement of the fulfillment of obligations in the case of concentrations), regardless of the status of the court appeal or payment of a fine;

11. At the same time, «Guide for assessing the impact of competition authorities' activities» OECD 2014 contains an approach that the AMCU has not implemented in the current version of its own methodology for calculating the economic impact:

- assessment of the impact of the actions of the competition authorities, which is carried out in the form of sensitivity analysis (using a range of values in case of uncertainty of one or more variables);

12. **An example of the AMCU's own approaches** is the provision of comments to a draft regulatory act of a state or local government body regarding provisions that have a potential anticompetitive effect. In this case, we first determine what kind of impact these regulations have. If the regulations create advantages for an entity or group of entities operating in the market, we assess the result of such intervention as the restoration of proper competition conditions (5%* of the market volume). If such rules would create unreasonable costs for final consumers, the economic impact of the intervention is calculated as the amount of such avoided costs (losses).

13. It is important to note that having developed the practice of applying this OECD methodology for assessing economic impact, we do not stop the process of improving our work. This guide was published more than eight years ago, so the AMCU plans to study the experience of its practical application by other competition authorities in order to integrate other relevant practices into its work, if necessary.

3. On informing about the AMCU's activities

14. More than two years ago, the AMCU set an ambitious goal to completely modernize all available tools and platforms for stakeholder communication with stakeholders.

15. The need for a significant revision and improvement of the communication strategy was caused by the presence of signs that indicated an insufficient level of understanding of the principles of the AMCU's work and its tasks by the business community and society. One of the most problematic consequences of this was the weak public support for the reform of antimonopoly legislation, despite all its obvious benefits for both the economy and the welfare of citizens.

16. In order to identify weaknesses in the communication policy, we analysed the available information by dividing it into separate blocks. For example, the public perception of the AMCU's work was assessed based on the content of public inquiries, messages, comments and questions from citizens during events, TV and radio broadcasts and on social media.

17. Separately, we studied the information field in terms of the press' attention to the AMCU's decisions and position: the essence of requests for information from the media, the number of reports on the AMCU's work with a negative tone, the number of media reports with incomplete or incorrect information, etc.

18. As for the authorities and market participants, we took into account the number and effectiveness of working meetings and how often specialized experts discuss the AMCU's activities.

19. Based on the analysis of the above points, we have seen significant potential for improvement by modernizing communication tools and, above all, its content.

20. An example of negative experience. In previous years, the AMCU produced a fairly large number of communications about its work – about 400 per year. At the same time, if we analyse their content, most of them were rather formal and uniform, sometimes containing complex and incomprehensible to the general public wording or extensive references to legislation, and instead did not contain a description of the significance of the decisions made for the market and society. This sometimes led to inaccurate information about the AMCU's work being published in the media. Sometimes, the press ignored the AMCU's communications altogether, failing to understand their meaning. Over time, this led to a decrease in the overall level of awareness of the AMCU's work.

21. Measures to improve communication.

22. To improve the situation, the AMCU:

- developed several internal short-term plans for further communication;
- improved the form of presentation of information;
- organized a series of internal trainings for the AMCU's employees, including with the support of international partners. Thanks to the trainings and internal mentoring, we quickly managed to develop a **unified style of presenting information about the AMCU's work**, making these messages more meaningful, easy to comprehend, reasoned and understandable not only for lawyers or market participants, but also for any citizen.
- **expanded the list of types of communications about the AMCU's work.** Previously, the AMCU reported mainly on the opening and outcome of cases, studies, recommendations, individual court decisions and generalized practice. Gradually, we started to add to this list notifications on merger decisions with their justification, increased the amount of information on the progress of appeals against our decisions in courts, and published thematic analytical articles based not only on the general position of the AMCU, but also on the experience of individual experts or the practice of departments.

23. A real challenge for us was **to overcome the so-called “centralization” of news.** For a long time, the AMCU's central office was more actively informing about the work of the AMCU, while the activities of the six regional offices of the AMCU were limited to a narrow list of formally required publications on the websites of the regional offices. From these short messages, residents of the regions, local businesses and the press were unable

to obtain clear information that was nevertheless important for the development of the local economy and general welfare. As a result, the public had a false impression that the AMCU was only concerned with big cases, ignoring the needs of regional markets.

24. In order to “decentralize” news about the AMCU, we created six separate information channels for the AMCU's regional offices: we updated their websites, formed a separate database for each regional office to send news via email, which included addresses of local authorities, specialized associations and local media, created pages on social media for the regional offices and started broadcasting their news on the AMCU's specialized Telegram channel.

25. After the first e-mailed regional newsletters, we achieved the desired result: the local press became interested in the decisions of the regional offices and began to actively quote and discuss them.

26. Awareness of the general public about the decisions and position of the AMCU or its regional offices has launched a communication chain, which has resulted in a significant increase in the attention of the public, authorities and business to the AMCU's decisions and competition and integrity issues in general.

27. For example, the press began to pay attention to cases where public procurement customers entered into agreements with companies that the AMCU had already fined for bid rigging. As for undertakings, thanks to the widespread information about the AMCU's decisions, they learned that certain companies had no right to impose additional requirements on them that were not provided for by law as part of procurement procedures.

28. Widespread information about the AMCU's decisions draws the attention of stakeholders to the authorities' actions and usually speeds up the return of the situation to the legal framework.

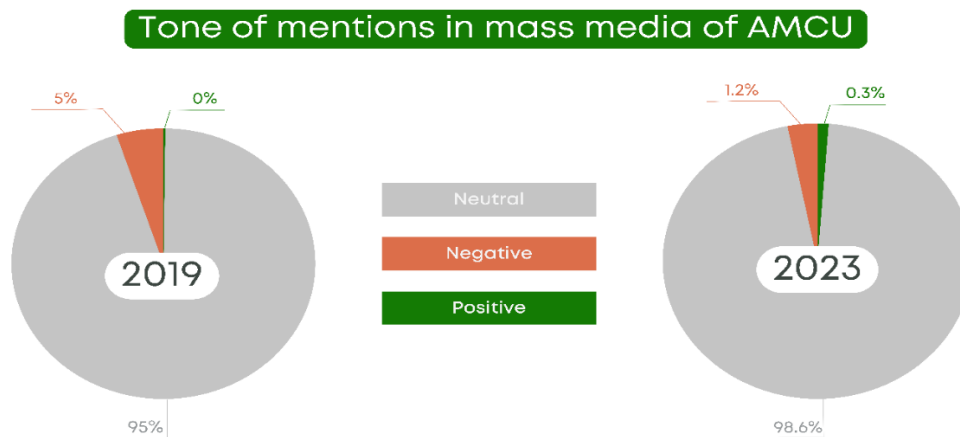
29. It is expected that this increase in information activity is not welcomed by all participants in the process, especially by the defendants in the cases. Some of the defendants have raised claims against the AMCU, for example, regarding the publication of information on the opening of cases and even tried to force the removal or refutation of these notifications through the court. At the same time, the AMCU's position on this remains unchanged - the overall importance of information on the opening of cases and investigations and its advocacy function are significant. After all, these notifications are a powerful signal to players in the respective markets.

30. In addition, as part of the implementation of the State Anti-Corruption Program 2023-2025, information about the work of the AMCU and its transparency will be further enhanced.

31. So, despite the fact that our human and financial resources to support the communications system and its diversity have been reduced by almost half during the war, we are determined to continue implementing this course of **enhanced transparency**.

32. After all, we have already achieved a tangible result: a large volume of citations of AMCU news in the regional press, news from the AMCU's central office are actively reprinted by the country's largest media, discussed by experts and market participants. By the way, we managed to significantly reduce the number of negative references to the AMCU: from 5% in 2019 to 1.2% in 2023.¹

¹ According to the monitoring platform LOOQME.



33. The AMC also closely communicates with various trade associations, i.e., organisations that represent the interest of businesses (as noted by the OECD ²). For example, the AMCU holds meetings with the American Chamber of Commerce, the European Business Association, and the International Chamber of Commerce in Ukraine. On the one hand, it is a source of information on the situation in the relevant markets, and on the other hand, it is an effective tool for advocating for competition among the members of the respective associations.

34. An additional indication of the increased attention of the business community to the AMCU's position is that market players, prior to entering into purchase agreements, began to widely report in the press that they had applied to the AMCU for the relevant permit. Previously, there were very few such reports. This is one example of the result of communication with the business community on the importance of compliance with competition rules, which is gradually becoming mainstream in Ukraine.

35. **Regarding information dissemination channels.** Of course, social media is important, although this process is time-consuming and does not always yield the desired result, as social media algorithms change frequently, while the effect of the "information bubble" of users remains unchanged.

36. Currently, the most effective tool for disseminating information for us **is targeted email newsletters**, the database of which we have completely updated. This is confirmed by comparing the rates of media coverage of news that were and were not sent by the AMCU via e-mail.

37. Thus, the media turned out to be the biggest partner in implementing our communications and advocacy strategy.

4. Conclusion.

38. Thus, despite the limited number of resources, the AMCU used all available opportunities to become as clear and predictable as possible for the business community, government and society. The AMCU's communication strategy aimed at enhancing openness and transparency in the AMCU's activities has yielded positive results.

² Communication of competition authorities: objectives and tools – Background Note prepared by the OECD Secretariat to serve as background material for the 140th meeting of the Working Party 2 on Competition and Regulation on 12 June 2023