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Working Party No. 2 on Competition and Regulation

**Market Studies and other Market Analysis Tools for Competition Authorities – Note by
Ukraine**

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This document reproduces a written contribution from Ukraine submitted for Item 4 of the 80th meeting of Working Party 2 on 3 December 2025.

More documentation related to this discussion can be found at: oe.cd/msmat.

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1. Introduction

1. The Antimonopoly Committee of Ukraine (AMCU) plays a key role in shaping and ensuring a competitive environment in Ukraine. Important tools in its activities to promote competition include conducting market study and other market analysis tools.
2. The purpose of using such tools is to analyze and assess the state of competition in the market, identify possible signs of violations, and formulate recommendations for the development of a competitive environment.
3. The results of such activities enable the AMCU to propose systematic solutions, in particular amendments to legislative and regulatory acts, including those aimed at removing administrative barriers to market entry.
4. As a competition authority, the AMCU has the necessary powers, including the power to issue recommendations to undertakings and public authorities, to effectively ensure the development of economic competition in relevant markets.

2. Market studies: Legal Frameworks and Practices

2.1. Legal Frameworks

5. Market studies conducted by the AMCU are a classic tool of the competition authorities aimed at conducting a comprehensive assessment of the state of competition in the market.
6. The AMCU may initiate market study, in particular on its own initiative (both planned and unplanned study), based on statements from undertakings, citizens, associations, and organizations if there is a possible violation of their rights in the field of competition, based on appeals from state authorities and local self-government bodies.
7. Thus, between 2018 and 2024, the AMCU conducted 11 in-depth market studies.
8. When conducting market study, the AMCU usually analyzes:
 - the state of competition, trends, and prospects for the development of competition in the relevant market;
 - the presence (absence) of a monopoly (dominant) position of an individual undertaking or group of undertakings (collective monopoly) on the market;
 - presence (absence) of signs of violations of legislation on the protection of economic competition in the actions of an individual market participant or group of participants, in the actions of participants in related markets;
 - the feasibility of adopting measures to ensure the development of competition in the relevant market;
 - feasibility of adopting measures to stop actions that contain signs of violation of legislation on protection of economic competition.
9. In order to collect information necessary to establish facts of violation of competition conditions in the studied market, the AMCU may send requests for information

(with a fine of up to 1% of annual turnover in case of failure to provide or incomplete provision of information), conduct inspections of undertakings (with court permission), engage expert and scientific institutions, consult with regulators, and conduct various types of consumer surveys.

10. The purpose of market study is **to obtain complete and detailed information about the state of competition** in the market and to develop proposals for improving the regulatory environment and/or obtaining grounds for further investigation of anti-competitive practices in this or a related market.

11. Based on the results of the study, a report is compiled and published on the website of the Antimonopoly Committee of Ukraine, and a decision may be made to initiate a case regarding a violation of competition legislation.

12. In addition, recommendations remain an important legal tool for the AMCU, which are binding for consideration by those to whom they are provided. The AMCU may provide recommendations to undertakings and public authorities both during market study and in the context of monitoring compliance with competition legislation.

2.2. Example of market study

13. The AMCU recently completed a market study of the seed certification market in Ukraine. Although the study was launched in 2020, the priority of the agricultural and related markets has significantly increased since the introduction of martial law, as the share of grain exports in Ukraine remains substantial.

14. The AMCU conducted a study on the state of competition in the field of seed certification, in particular during the determination of its varietal qualities by the SoE State Centre of Agricultural Products Certification and Examination (hereinafter – the SoE SCAPCE).

15. Seed certification is a mandatory requirement for bringing seeds to market. Since 2017, the only body authorized to issue certificates of seed variety quality in Ukraine has been the SoE SCAPCE.

16. The determination of whether seeds belong to a particular variety is carried out according to a special procedure, which may be performed either by employees of the specified SoE SCAPCE or by independent persons (auditors).

17. At the same time, during the AMCU 's study, it was established that the SoE SCAPCE obliged independent auditors to conclude agreements with it that were not provided for by law, which created artificial barriers to entering the market for services determining the belonging of seeds to a particular variety.¹

¹ *For reference.* The AMCU found that independent certification auditors (agronomists-inspectors) are direct competitors of the SoE SCAPCE, which employs certification auditors who conduct field evaluations of certified seeds.

In practice, independent experts could provide field evaluation services for certified seeds during the certification procedure only if they had a contract with the SoE SCAPCE. In fact, the SoE SCAPCE independently and at its own discretion regulates access to the provision of relevant services.

At the same time, the AMCU established that in 2019-2022, the vast majority of field evaluation services for certified seeds as part of the certification procedure were provided by SoE SCAPCE auditors. Their share was 97.3% in 2019, 96.8% in 2020, 98.93% in 2021, and 98.9% in the first nine months of 2022.

18. Such actions constituted abuse of a monopoly position under Article 13 of the Law of Ukraine “On Protection of Economic Competition” in the form of creating obstacles to independent auditors' access to the market. However, since the mentioned actions did not lead to a significant restriction or distortion of competition and did not cause substantial harm to individual persons, the AMCU, on March 2, 2023, issued recommendations to the SoE SCAPCE to discontinue the practice of mandatory contracts with independent auditors and to eliminate the causes and conditions contributing to the violation.

19. In addition, the AMCU also proposed that the Ukrainian government amend regulatory acts to improve the regulation of seed certification.

2.3. Ex-post evaluation of provided recommendations

20. As a result of reviewing the AMCU's proposals and recommendations:

- The SoE SCAPCE (as confirmed by subsequent AMCU's surveys of the market participants) stopped refusing to issue seed certificates to undertakings that underwent the seed variety determination procedure with independent auditors not affiliated with the SoE SCAPCE.
- The Ukrainian government agreed with the AMCU's proposals, stipulating that undertakings must conclude contracts directly with independent auditors, without the intermediation of the SoE SCAPCE.

21. As a result, the AMCU concluded that these actions opened up the market for independent auditors and created a competitive mechanism for accessing services to determine the variety of seeds. Thus, this example demonstrates the importance of market studies for advocating competition rules and ensuring compliance with the principle of competitive neutrality, particularly in markets where state-owned undertakings operate.

3. Other market analysis tools

3.1. Targeted compliance control: Legal Framework

22. In addition to conducting market study, the AMCU has the ability to carry out inquiry (**targeted compliance control** measures) to check the compliance with legislation by undertakings or central/local authorities in relevant markets. Such measures are applied in cases where the AMCU receives information about possible infringements, but the available data is insufficient to initiate a comprehensive market study or investigation/initiation of a case, and at the same time the situation requires prompt reaction to assess the market situation.

23. During such inquiry, the AMCU exercises the same powers to collect information as it does in market study. In particular, the AMCU may send requests for information, demand documents, explanations, and statistical data from undertakings, state authorities, local self-government bodies, and industry regulators. In case of refusal or submission of incomplete information, fine of up to 1% of annual turnover shall be imposed on such undertakings.

24. The result of targeted compliance control may be, in particular:

- gathering sufficient information confirming the existence of signs of a violation of competition legislation or refuting previous concerns about competition in the relevant market;

- providing recommendations to undertakings or public authorities on eliminating actions or inaction that could potentially restrict competition.

25. In addition, it is worth noting that public authorities and local self-government bodies are required to approve their draft bylaws with the AMCU if such acts may affect competition. This obligation enables the AMCU to identify and address potential competition risks before the bylaw enters into force.

26. Such targeted compliance control measures allow the AMCU to **respond promptly to changes in the market situation** and the behaviour of market participants without the need to launch a comprehensive market study, as there is no need to focus on the entire market, but only on its specific actors. In addition, they allow the AMCU to allocate available resources flexibly, focusing only on cases where there are potential signs of violations or risks to competition.

27. At the same time, by using tools for collecting and analyzing information, the AMCU can quickly identify existing risks, assess their potential impact, and decide whether to initiate a case or limit itself to providing recommendations. This approach helps maintain a stable competitive environment even in sectors where the situation is changing rapidly.

3.2. Example 1 of targeted compliance control application and challenges (Carpooling market)

28. In 2024, the AMCU, on its own initiative, carried out targeted compliance control regarding the methods of establishing service fees by undertaking in the carpooling services market.

29. As part of this control, the AMCU also sent requests to various undertakings and authorities, and communicated with foreign competition authorities.

3.3. However, despite its broad powers to collect information, the AMCU still faces certain difficulties, particularly when studying digital markets.

30. Problematic issues are most often related the lack of effective ways to obtain information from companies that do not have a representative office in Ukraine.

31. In addition, the **challenge for the AMCU during the targeted compliance control was the definition of the market**, since research into digital markets is a relatively new field for Ukraine.

32. Although the AMCU contacted more than 20 competition authorities in other countries to learn about their experience and approaches to investigating the carpooling market, most of the countries surveyed reported no concerns about this market, as it has a sufficient number of participants for effective competition and no complaints.

33. At the same time, **individual competition authorities shared their experience** of approaches to researching other digital markets, which also assisted the AMCU in these control measures. This was possible as a result of the AMCU's participation in the Memorandum on Regional Cooperation in the Field of Competition Policy, which emphasizes the importance of international cooperation in conducting investigations.

34. During this compliance control measures, the AMCU defined carpooling as a separate market for transport services, operating primarily through online platforms.

35. The next challenge during the research was obtaining reliable information, particularly from companies that do not have a representative office in Ukraine. The AMCU identified four major market participants, but only some of them provided the requested information. For undertakings registered abroad that did not respond to the request, the AMCU made its own calculations of service volumes based on publicly available data.

36. At the same time, cooperation with a company represented in Ukraine on the basis of a license agreement proved to be effective. In the course of its analysis, the AMCU established that this company had signs of a dominant position in the carpooling services market (approximately 100% market share), which in itself is not a violation, but requires special responsibility in relations with consumers.

37. The AMCU drew attention to the lack of economic justification for establishing a service fee and the inconsistent application of rules for refunding it to passengers under similar conditions. Given the risk of discriminatory approaches and potential violations of competition legislation, the AMCU provided the company with recommendations on how to address the identified shortcomings.

3.4. Positive effect of the AMCU's intervention

38. The company agreed with the AMCU's conclusions, updated its terms of use, detailed the refund algorithm, and provided additional explanations. As a result, the case was settled without a formal investigation, demonstrating the effectiveness of targeted compliance control in preventing violations and increasing the transparency of digital platforms.

3.5. Example 2 of targeted compliance control application (Gas markets)

39. One more example of application of targeted compliance control measures took place in 2020, when the National Energy and Utilities Commission of Ukraine (UA Energy Regulator) introduced amendments to the Gas Transmission System Code stipulating that the Gas Transmission System Operator shall not accept financial security in the form of a bank guarantee issued by a bank that **has not been included by the National Bank of Ukraine in the list of systemically important banks**.

40. In the AMCU's view, such actions may create obstacles to the development of competition, in particular by:

- **limiting the ability of undertakings** operating in the natural gas market to choose a banking institution that provides a guarantee;
- **restricting banks** in their ability to conduct business and earn income in the field of providing financial security for such undertakings' obligations through the issuance of bank guarantees.

41. It is also worth noting that in 2020, more than 70 banks operated in Ukraine, of which only 14 were recognized as systemically important. Consequently, most banks were excluded from the possibility of entering into agreements with gas market participants. As a result, the AMCU provided the NEURC with **binding recommendations for consideration** to bring the provisions of the Gas Transmission System Code, in the part concerning financial security requirements for gas transmission service customers, **into compliance with competition law** by preventing:

- the **granting of privileges or other advantages** to certain undertakings or groups of undertakings that place them in a favourable position compared to competitors, which results or may result in the prevention, elimination, restriction, or distortion of competition;
- the **creation of unfavourable or discriminatory conditions** for certain undertakings or groups of undertakings compared to their competitors.

42. This example demonstrates how the AMCU can effectively address a specific distortion of competition - in this case, restrictions arising from financial guarantee requirements in the gas transmission sector - through targeted recommendations to the regulator, rather than conducting a full-scale market study.

43. As a result, the NEURC implemented recommendations by amending the Gas Transmission System Code even in the same year in 2020.

4. Conclusions and future plans of the AMCU

44. The AMCU recognizes the importance of effective market analysis tools – both formalized ones, such as classic market study, and flexible tools for ad hoc responses to dynamic circumstances in individual markets. The combination of these approaches makes it possible to simultaneously analyze systemic problems in depth and respond quickly to new competitive challenges.

45. Market study is particularly important in sectors undergoing fast transformation, particularly in the field of digital markets and online platforms. These markets are characterized by rapid innovation, which leads to changes in market shares, shifts in market power, etc., making it difficult to define relevant market and assess market power in the traditional way.

46. At the same time, the AMCU's position on the value of traditional market study remains unchanged – it is a key tool for comprehensive study of market structure and barriers, and for developing proposals to improve regulatory and legal regulation. The results of such study can also serve as a basis for advocating competition, especially in sectors where state-owned enterprises operate.

47. The AMCU has a wide range of tools for collecting and analyzing information both within and outside the market study procedure, which ensures flexibility and rational use of the authorities' resources. At the same time, as practice shows, modern markets are becoming increasingly regionalized/globalized, which complicates the independent study of all factors affecting them.

48. International cooperation is becoming particularly relevant in view of global market trends. The AMCU believes that not only the use of other countries' experience, but also the study of common issues in real time and the exchange of information can provide valuable input for national market studies.

49. Therefore, one of the proposals to enhance the effectiveness of joint market investigations could be the further development of regional cooperation between competition authorities of neighbouring countries, where markets are mostly cross-border (transport markets, for example). Even coordinated collection of information and regulatory issues by competition authorities would have a positive effect in terms of better understanding the situation on the markets of each country and determining the advisability of using advocacy tools or enforcement by each competition authority separately in the future.