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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

Methodologies for Conducting Market Studies – Note by Ukraine

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More documents related to this discussion can be found at www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm

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Ukraine

1. Information gathering

1.1. What types of information does your authority collect when conducting market studies (e.g. survey data, pricing and volume data purchased from third-party data providers, financial statements, qualitative observations from in-depth interviews, sector regulation information, etc.)?

1. During the conduct of market studies the AMCU usually uses the following sources of information:

- Statistical information (data), i.e. official state information describing mass phenomena and processes occurring in the economic, social and other areas, in Ukraine and its regions (such information is obtained through sending information requests addressed to state statistic agencies).
- Administrative data, i.e. the data obtained from observations conducted by the state agencies (except for state statistic agencies), bodies of local self-government and by other legal entities pursuant to the Laws in line of their administrative duties and tasks they are responsible for (such information is obtained through sending respective requests).
- Sample surveys and polls of general public or other customers (natural persons and legal entities) about market situation, i.e. answers the respondents provide on a range of issues, in particular the buyers' opinion about the range and quality of products, assessment of buyers' intentions and motives, their preferences, wishes and requirements to products' consumer qualities and their interchangeability, and/or characteristics of the products (such information is obtained through conducting our own surveys or through ordering such surveys from respective firms, which are specialized on the conduct of sociological studies).
- Consumer panel survey data, i.e. information about the views expressed and behavior exhibited by consumers, as a result of permanent comparison (panels) of consumers that constitute a representative model of a common set of consumers (such information is obtained through sending information requests addressed to state statistic agencies).
- Data about production plans of entrepreneurs that are economic entities, in particular the data published in the mass media (such information is obtained through sending requests addressed to respective economic entities or through searching and analyzing information available in the mass media).
- Data collected through departmental and independent research and by information centers about status, structure and volume of product markets, share of individual producers and buyers in the turnover of products (such information is obtained through sending informational requests).
- Polls of experts (specialists in related areas) about their assessment of the market (supply and demand) equilibrium and buyers' priorities with relation to consumer quality of products by selected criteria of products' interchangeability in product groups (such information is obtained through sending informational requests and conducting surveys).

- Information about activities of the economic entities collected by the AMCU, other state agencies in the current and previous years.
2. It is worth noting that now there is no established obligatory list of sources of information that shall be used by the AMCU during the conduct of market studies.

1.2. How does this information vary based on the market, or the objective of the study?

3. The set of necessary information may vary, depending on the researched market or the study objectives, because every market has its own specificities and performance features (in particular, the existence of administrative or economic entry barriers, the turnover of excisable products, the existence of state price regulation, retail sale of products or through public procurement procedures, etc.).

1.3. Does your authority conduct some background research to start with before conducting more intensive data gathering? And if so, how does it structure its information gathering approach?

4. The study could be conducted in two phases, as follows:
- Phase I – the conduct of market analysis;
 - Phase II – the conduct of comprehensive market study.
5. During the Phase I the AMCU aggregates all available within the AMCU information (including those in territorial offices) and other information obtained from public available sources, Internet, state statistic agencies, the mass media, etc., which enables us to define specificities and operational features of the market.
6. Phase II, namely the conduct of comprehensive market study, consists in its turn of the following stages:
1. Preparatory stage.
 2. Gathering all necessary materials and information:
 - a. Defining sources, methods for data gathering, preparation of requests on submission of information, including those, which are typical.
 - b. Gathering materials and information.
 3. Analysis of aggregated data.
 4. Preparation of the Report on results of the comprehensive study with relevant findings and proposals.
7. Within Preparatory stage of comprehensive market study the AMCU prepares the following materials:
- Indicative (recommended) plan for the conduct of study with due indication of sub-stages and deadlines for its accomplishment.
 - Technological map of study, including indicative list of questions that should be incorporated into request (requests) on submission of information, and forms for gathering information received from economic entities, single form for formalization of information gathered by territorial offices and its submission to the AMCU upon results of conducted study.
 - The list of questions in respect of which relevant findings and proposals should be prepared on the basis of gathered information, etc.

1.4. What is your approach to decide whether / when to move from background research to more intensive data gathering

8. The transition to Phase II directly depends on results achieved on the basis of market analysis during Phase I.

9. If during the market analysis the AMCU has not found any reasons for competition related concerns or a sign of the existence of the competition related problems in given market, such study does not move to Phase II.

10. If on the basis of market analysis the AMCU has found reasons for competition related concerns or signs of the existence of competition related problems in given market, or the AMCU has not sufficient information for developing coherence picture of the market, such study moves to Phase II.

11. In this context it should be noted that the question on the transition of the study from Phase I to Phase II depends, not least of all, on reasons for the initiation of the study.

12. In particular, product market studies could be conducted by the AMCU in the following cases:

- Upon its own initiative.
- Upon instructions of supreme public authorities.
- Upon the application of economic entities, citizens, associations, agencies, organizations on the violation of their rights as a result of acts or omissions, which have signs of the violation of the legislation on protection of economic competition.
- Upon the application of bodies of state power, self-government bodies, bodies of administrative and economic management and control on violation of the legislation on protection of economic competition.

13. It should be noted that the consideration of applications on violation of the legislation on protection of economic competition, instructions of supreme public authorities, law-enforcement agencies requires final éclaircissement of the issue on existence/absence of signs of the violation of the legislation on protection of economic competition in actions of particular market participants.

14. Thus, the question on the transition of the study from the Phase I to Phase II will depend on whether the AMCU has managed on the basis of Phase I to definitively find out the existence or absence of signs of the violation of the legislation on protection of economic competition in actions of particular market players or not.

1.5. If your authority has the powers to issue compulsory orders during the information gathering process, what types of information does it request in such orders?

15. According to paragraph 5 of Part 1 of Article 7 of the Law of Ukraine “On Antimonopoly Committee of Ukraine” when exercising control over compliance with the legislation on protection of economic competition the AMCU has the power to require from the economic entities, associations, bodies of state power, self-government bodies, bodies of administrative and economic government and control, their officials and employees, other natural persons and legal entities to provide information, including the one with restricted access.

16. Articles 22 and 22¹ of this Law provide for that requirements of the AMCU shall be binding and executed in duly established terms, all economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, other legal entities, their structural subdivisions, offices, representative offices, their officials and employees, persons shall submit documents, items or other data carriers, explanations, other information, including restricted information, and bank secrets that the AMCU requires to meet the objectives set forth by the legislation on protection of economic competition.

2. Information analysis:

2.1. What analytical methodologies has your authority applied in market studies (e.g. data description and analysis, price concentration analysis, profitability analysis, etc.)? How do these methodologies vary based on the market, or the objective of the study? Are some methodologies used more frequently in the context of market studies than in enforcement actions?

17. During the conduct of market study the AMCU usually applies statistical methods of information analysis, main types of which include the following:

- Correlation analysis (which enables us to detect and assess the direction of connections between researched parameters).
- Factorial analysis (which enables us to determine the system of independent variables, which lies at the root of the set of interrelated quantities).
- Cluster analysis (which enables us to divide group of objects into several groups, which are mutually disjointed in terms of the set of quantitative and qualitative characteristics, The main purpose is the market segmentation).
- Discriminant analysis (which is used for the determination of distinguishing features of two or more object categories).
- Population analysis (which is used for the starkly illustration relative position of competing producers of goods (works and services) in the market with reference to competitors).
- Comparative analysis.

2.2. How are different types of information and analysis weighed, including when they are not fully consistent with one another (e.g. qualitative vs. quantitative evidence, surveys vs. interviews, and econometric analyses vs. simple quantitative indicators)?

18. As of today the AMCU has never faced in its practice the situation of substantial difference between results of different types of analysis. Moreover, results of the conducted by the AMCU comprehensive study in pharmaceutical markets in at large are confirmed by relevant data of field-specific consulting agencies.

3. Case studies

3.1. Please provide a brief description of a few recent market studies that are representative of the types of methodologies used by your authority (e.g. financial data analysis, surveys, background research, econometric analysis, etc.).

3.1.1. Electricity and thermal coal market research

Information gathering.

19. The main aim of our research was the following.
20. We wanted to analyse a competition level in the relevant markets and to identify the factors preventing the developing a competition and creating preconditions for violation of competition legislation of Ukraine.
21. During our research we determined:
 - market boundaries (product, territorial and time boundaries),
 - market participants,
 - status of certain participants in the market and their market power.
22. Our studies covered all levels of electricity distribution from its production to sales to end users.
23. Today, Ukrainian electricity market it's functioning on the single buyer model.
24. All the electricity produced in Ukraine regardless of generation capacity is sold in the wholesale market.
25. The state enterprise "Energorynok" is an operator of a wholesale market.
26. "Energorynok" sells electricity to providers, which are already directly supplying electricity to retail customers: households and enterprises.
27. The wholesale market of Ukraine is functioning in the form of anticompetitive concerted actions on the basis of agreement between its members.
28. This model of the electricity market is adopted by the Law of Ukraine.
29. Due to contracts existing in the wholesale electricity market we singled out 3 markets:
 1. The national market of electricity which is bought by Energorynok from producers and importers (generation market);
 2. The national market of electricity that is sold by Energorynok to retail suppliers (wholesale market);
 3. The national market of electricity transmission, including central dispatching control of the United energy system of Ukraine (electricity transmission market).
30. Dispatching control of the United energy system of Ukraine provides the state enterprise Ukrenergo.
31. These three markets are characterized by a high level of concentration.

Information analysis.

The main challenge we've faced to during our research was the market definition. For example whether electricity produced on different kinds of generation capacity forms separate product markets, or whether it's one product market. We had lots of consultations with experts of Ukraine, European Union and USA. At last we made a conclusion that the electricity is the single commodity that is characterized by uniformity and interchangeability regardless of the method of generation (nuclear, thermal, hydro or produced from renewable resources).

32. We defined territorial boundaries as the territory of Ukraine and the time boundaries as a calendar year. The period of our research covered two and a half a year (since 2013 till the first half of 2015).

33. The value of supply of electricity (generation of electricity) depends proportionally on the value of demand (consumption), which varies not only in different seasons, but also during the day.

34. Basic daily schedule of production / consumption electricity is filled mainly by nuclear power plant.

35. Thermal power plants operate both in the basic part of daily schedule, and in its variable part and are included under marginal principle.

36. Hydro power plants operate mainly in variable (peak) part of daily schedule.

Due to this specific we came to conclusion that nuclear power plant Energoatom, the thermal power plans DTEK and hydro power plant Ukrhydroenergo have structural features of collective dominant position as sellers on generation market. Total joint share of these companies on generation market during the period of research was above 80 %. And structural features of dominant position as the buyer on generation market have Energorynok.

37. On the wholesale market structural features of dominant position have Energorynok as the single seller.

38. On the electricity transmission market Ukrenergo has structural features of dominant position as the services provider and Energorynok - as their customer.

39. Despite such a big size of market shares and high level of concentration, we covered that the market power of these entities who hold the largest share in the national market of electricity, is constrained by administrative influence.

40. This on the one hand may limit the market power of these entities, and on the other hand may prevent the developing a competition.

41. For example the pricing in the market is mostly conducted by the National Energy Regulator.

42. Resource filling of the market is also regulated.

43. Ministry of Energy and Coal Mining of Ukraine affirms the forecast balances of electricity of the United energy system of Ukraine.

44. The operator of the Wholesale electricity market forms load schedule.

45. Ukrenergo performs the functions of centralized dispatching management and control of the United energy system of Ukraine, and therefore has impact on the sales of electricity in the Wholesale electricity market of Ukraine by generators of electricity.

Results

46. We determined the main factors that prevent the development of competition in the national electricity market. Among them there are:

1. Lack of price competition between electricity generators.
2. Significant level of debts for payments for electricity in all levels of distribution.
3. Delaying in the unbundling of the natural monopolies from activity in the potentially competitive markets.
4. Existence of preferences and priorities for certain types of generation capacities in the course of inclusion to the power generation load schedule.
5. Significant amount of cross-subsidies in the electricity sector.
6. Absence of procedure or method of forming System marginal price.
7. Absence of transparent and non-discriminatory procedure for formation forecast electricity balances of the United energy system of Ukraine.
8. Problems of the coal sector, including:
 - a. – Significant amount of state aid for state coal extracting enterprises;
 - b. - Absence of thermal coal market.

47. According to this we prepared recommendations to Parliament, Government, National Regulator, Ministry of energy and coal Mining of Ukraine, and other authorities to develop competition in this market.

48. Preliminary conclusions of our research were publicly presented. We invited to that presentation market participants, representatives of Parliament, Government, National Regulator, Ministry of energy and coal Mining of Ukraine, experts and media.

49. We tried to do all our best to make our research transparency and public.

50. All interested parties were given the opportunity to get acquainted with the research materials, to provide their comments and propositions to the preliminary conclusions. In addition, the Committee has consistently informed the public about the progress and results of research through meetings, round tables, forums, placement in media reports, etc.

51. The final results of the electricity market research are reflected in the report that was adopted by Antimonopoly Committee of Ukraine and posted on the our web site. It is available also in English, so I invite everyone to visit our web-site and get more detailed information about our research.

52. After adoption of the report we had several meetings with The National Regulator, the Ministry and the other authorities regarding developing the ways of implementation the recommendations.

53. And I want to admit that we have first results of our work:

54. The Ministry of Energy and Coal Mining developed a procedure of forming forecast electricity balances of the United energy system of Ukraine and the National regulator adopted a procedure of forming the wholesale electricity price. Drafts of this document were approved by Antimonopoly Committee of Ukraine. It was not easy, we had remarks, but after long discussions the Ministry and National Regulator took them into consideration.