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Working Party No. 3 on Co-operation and Enforcement

Co-operative Antitrust in Remedy Design – Note by Ukraine

3 December 2025

This document reproduces a written contribution from Ukraine submitted for Item 3 of the 142nd meeting of Working Party 3 on 3 December 2025.

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

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1. Introduction

1. Remedies are an important tool for competition authorities to ensure compliance with competition rules, prevent new infringements, or restore competition.
2. The Antimonopoly Committee of Ukraine (AMCU) regularly uses this tool both in cases involving violations of competition legislation and in merger cases.
3. Although in traditional enforcement cases the AMCU mainly limits itself to remedies to cease actions that constitute infringement, in cases concerning the concentration of undertakings, the AMCU regularly imposes specific behavioral remedies on the parties to the concentration.
4. In addition, the number of concentration cases in which the AMCU imposed structural remedies on the parties to the case also increased significantly. Given the general trend toward market complexity and the need to maintain a balance between the application of remedies and consideration of industry specifics, consultations with regulators, expert institutions, and other competition authorities are becoming increasingly important.
5. This contribution contains a description of Ukrainian legislation and its application in the field of remedies, consultations with external stakeholders, as well as experience in preparing legislative amendments to provisions governing remedies in Ukraine.

2. Legislative framework

2.1. Authority to impose remedies

6. The Law of Ukraine on Protection of Economic Competition (Article 48 of the Competition Law) grants the AMCU the authority to impose remedies on undertakings regarding:
 - Termination of the violation;
 - Elimination of the consequences of violations, in particular elimination or mitigation of the negative impact of concerted actions, concentration of undertakings on competition; and
 - Compulsory divestiture of an undertaking holding a monopoly (dominant) position in the market.
7. As for the decisions on imposing remedies for compulsory divestiture, it should be noted that, according to the current legislation, the AMCU is limited in its powers to determine the method of their implementation. Currently, an undertaking in Ukraine that has abused its dominant position and is subject to compulsory divestiture may, at its discretion, **carry out a reorganization provided that it eliminates its dominant position.**
8. In addition, pursuant to Article 7 of the Law of Ukraine “On the Antimonopoly Committee of Ukraine,” the AMCU may issue binding recommendations to eliminate the causes of violations and the conditions that contribute to them.
9. As for concentrations, the AMCU can only impose remedies on the parties to the deal if the transaction is reviewed in Phase 2 (Article 31), meaning if there are signs of

monopolization or significant restriction of competition in the markets involved. Such remedies should **eliminate the negative impact** of the concentration on competition, and the content of the remedies may be discussed with the AMCU during consultations.

2.2. Powers to cooperate on remedies design

10. As noted earlier, modern markets are becoming increasingly complex and require more professional knowledge about their characteristics and functioning. Ensuring that a competition authority can obtain insights from the market is vital for the effective application of remedies.

11. In addition to having the authority to impose remedies, the AMCU may consult with other authorities and regulators.

12. **It should be noted that, in addition to conducting regular consultations, the AMCU may establish advisory bodies to develop methodologies for monitoring compliance with competition legislation and its application.** Such advisory bodies may include representatives of public authorities, public organizations, scientific institutions, civil society organizations, and the media.

13. These advisory bodies may also be established on an ad hoc basis to develop and define remedies in complex cases or where it is necessary to balance remedies and sectoral regulation.

14. As for concentration cases, market testing is not mandatory in Ukraine, but in practice it is conducted in most cases. Any person with an interest in the case may submit their comments on the proposed remedies.

15. In addition, the AMCU may conduct surveys of consumers and/or their associations in order to determine the possible consequences of the concentration for them.

16. Consultations with the specified parties, as well as consideration of information obtained during consultations, are at the discretion of the AMCU. At the same time, it should be noted that such information is usually taken into account by the Committee when developing remedies for undertakings.

17. On a separate note, the AMCU can order an examination when conducting investigations or considering cases involving concentration of undertakings. Such an expertise should cover a specific range of issues, and the AMCU has to take into account the suggestions of the parties and other people involved in the case. If the issues proposed by the persons involved in the case are rejected, the AMCU must adopt a reasoned decision.

18. The subject of the examination may also include issues related to the functioning of the market and/or undertaking operating on it, including for the purpose of further selection of effective remedies in the case.

19. Conducting such examinations allows the AMCU to engage persons (experts) with specific knowledge (e.g., about high-tech markets) that is not available to the authority's employees. In addition, conducting examinations provides an opportunity to verify information received from the parties to the case if such verification cannot be carried out independently by the AMCU (including regarding the possibility of fulfilling the proposed remedies, etc.).

2.3. Practical application of remedies.

20. In 2023, the AMCU considered concentration cases regarding the granting permissions to AI PAVE Dutchco I B.V. to acquire control over GfK SE and Acceleratio Holdco S.à r.l.

21. As part of its review of concentration cases, the AMCU studied, in particular, the relevant product markets in which the participants in the concentrations operate. The AMCU established that the participants in the concentrations operate in different product markets in Ukraine. Namely:

22. The Group of the object of acquisition of control operates in the following markets in Ukraine:

- marketing services for retail measurement of products that are not everyday consumer products;
- marketing services for consumer group segmentation (panel consumer surveys);

23. The Advent Group (Buyer) operates in the following markets in Ukraine:

- marketing services for retail measurement of everyday consumer products;
- individual marketing research services.

24. As part of its consideration of cases, the AMCU conducted a survey of consumers and competitors of participants in concentrations in marketing markets. As a result, the AMCU established that consumers in the markets for marketing services for retail measurement of everyday consumer products and marketing services for consumer group segmentation (panel consumer surveys) are the same undertakings – manufacturers of everyday consumer products.

25. In this regard, the AMCU concluded that concentrations may result in conglomerate effects that could harm competition.

26. In particular, since marketing services for retail measurement of everyday consumer products and marketing services for consumer group segmentation (panel consumer surveys) are consumed by the same consumers – manufacturers of everyday consumer products – this indicates that the specified marketing services are complementary services (purchased by the same group of buyers for the same end use).

27. Therefore, given the significant market shares of the Advent Group and the Group of the object of acquisition of control in the markets under study, there was a likelihood that, following the concentrations, the Advent Group would be able to:

28. restrict competitors' access to the market for marketing services for retail measurement of everyday consumer products in Ukraine, in particular by offering consumers comprehensive marketing services rather than each service separately [i.e., providing both marketing services – retail measurement for everyday consumer products and consumer group segmentation (panel consumer surveys)]. The provision of services as a package (bundling) may significantly reduce the ability of Advent Group's competitors, who are only able to provide a single marketing service, to provide the specified services.

29. At the same time, there are no significant counterbalancing factors to the anti-competitive effects of concentrations in these marketing markets. Currently, there are significant economic barriers to entry into the marketing services markets, and the emergence of potential competitors in these markets is doubtful. Prices for relevant

marketing services are determined individually for each project and are set through negotiations on pricing policy for each project separately.

30. Therefore, the implementation of concentrations could lead to:

- strengthening of Advent Group's position in marketing markets and, as a result, significant restriction of competition in the relevant markets;
- negative consequences in the form of a significant increase in Advent Group's market power in relations with consumers in the markets for retail measurement of everyday consumer products and marketing services for consumer group segmentation (panel consumer surveys).

31. After the implementation of the concentrations, the Advent Group will be able to exert real and effective leverage over consumers of marketing services; set inflated prices for services and maintain them at the corresponding (inflated) level, which would be impossible in conditions of significant competition.

32. In view of the above, the parties to the concentration were notified of the grounds for prohibiting the concentration and were given a period of time to submit proposals for commitments that could eliminate the potential negative impact on competition.

33. The parties to the concentrations have indicated their willingness to undertake commitments to remedy the negative effects of the concentrations on competition as a condition for the concentrations to be implemented.

34. These commitments were developed in cooperation with the AMCU to ensure compliance with the identified competition concerns.

35. As a result, the main content of the commitments provided for the obligation of GfK SE, taking into account the control relationship, to sell to an independent third party the assets that enable the provision of marketing services for consumer group segmentation (all contracts with customers and suppliers of services of consumer group segmentation; all tangible assets currently used by GfK SE to provide services of consumer group segmentation in Ukraine; all know-how and software necessary to continue providing services of consumer group segmentation, etc.).

3. Competition reform and regulatory concerns

36. Ukraine is currently undergoing the second stage of competition law reform, aimed at harmonizing it with EU rules and best international practices.

37. To implement the provisions of Directive 2019/1 (ECN+), among other things, the AMCU drafted amendments to Article 48, which provides for broader powers for the AMCU in the area of design and application of remedies .

38. Article 10 of the ECN+ Directive requires national competition authorities to be empowered to impose any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end ¹.

39. In the AMCU's opinion, the discretion of the competition authority regarding the design of remedy is extremely important in order to ensure the achievement of the primary

¹<https://eur-lex.europa.eu/eli/dir/2019/1/oj/eng#:~:text=for%20an%20interview.-,Article%2010,burdensome%20for%20the%20undertaking%2C%20in%20line%20with%20the%20principle%20of%20proportionality.,-Member%20States%20shall>

objective of imposing remedies, namely the termination of the infringement and the restoration of competition.

40. Thus, the new provisions of competition law were drafted in such a way as to empower the AMCU to impose any remedies. At the same time, during public consultations, stakeholders raised certain concerns about the proposed provisions.

41. As noted in clause 7, currently the AMCU cannot determine the specific method of enforcing the compulsory divestiture, whereas the proposed version of the draft law eliminated this gap by granting the AMCU the powers provided for in the Directive.

42. The National Bank of Ukraine has expressed its concerns regarding the proposed provisions. In its opinion, the AMCU is in fact proposing to grant powers to regulate the activities of banks and other financial institutions through the use of compulsory measures.

43. At the same time, the Bank's position was as follows:

«The reorganization of the bank could potentially have significant negative consequences for its depositors and creditors, and in some cases for financial stability. For example, in accordance with the Law on Banks, the National Bank shall not grant permission for the reorganization of a bank if there are sufficient grounds to believe that the reorganization threatens the interests of depositors and other creditors and the bank created as a result of the reorganization and/or the bank that does not cease to exist as a legal entity as a result of the merger or spin-off will not comply with the requirements of this Law and the regulatory acts of the National Bank regarding prudential standards of activity, bank management, as well as the requirements that a legal entity must meet in order to obtain a banking license. This caveat also applies to the compulsory alienation of corporate rights in a bank as a result of the AMCU imposing a structural remedy. Similar caveats also apply to the AMCU imposing structural remedies on insurers and other financial institutions».

44. Taking this into account, the NBU proposed to exclude financial institutions, the supervision and regulation of which falls within the powers of the National Bank, from the scope of undertakings to which structural remedies may apply.

45. In essence, the Bank's proposal completely eliminated the role of the AMCU in regulating the activities of banks in the event of violations of competition rules.

46. During consultations with representatives of the Bank, the latter agreed that such an exclusion could have a negative impact on competition in Ukrainian markets and proposed to leave it to the undertaking to determine the method of reorganization independently in order to ensure financial stability in Ukraine.

47. The Antimonopoly Committee of Ukraine recognizes the need for a balanced approach to the development of remedies, especially in the area of prudential regulation. At the same time, the Bank's proposal:

- First, did not comply with the principles of independence of competition authorities;
- Second, undermined the role of the AMCU as a competition authority in developing measures aimed at restoring competition, giving preference to prudential instruments.

48. At the same time, the AMCU held consultations with the European Commission, which confirmed the correctness of the initial proposals to empower the AMCU to apply any structural remedies independently.

49. Despite this, the AMCU agreed with vital importance of markets under regulation of the NBU and currently is considering the possibility to include provision on mandatory consultations with NBU at the stage of remedy design, at the same time reserving full independence on application of remedies.

50. In the opinion of the AMCU, this provision may reflect a fair balance between the need to take into account the complex features of certain markets and their social significance, while preserving the independence of the competition authority and an adequate set of tools to protect economic competition.

4. Summary

51. With the transformation of traditional markets, the emergence of new ones, and the increasing dynamism of circumstances, the complexity of choosing remedies imposed by competition authorities is growing.

52. More and more often, the AMCU faces situations that require expert knowledge in market areas that may not be possessed by employees of competition authorities, as the market situation can change within a very short period of time or the market is high-tech and requires specific expertise.

53. In such circumstances, it is important to ensure that competition authorities have adequate powers to obtain information from other stakeholders, such as sector regulators, expert bodies, or civil society organizations, while maintaining a balance with the independence of competition authorities.

54. The AMCU has fairly broad powers to conduct sectoral consultations with various stakeholders and is also vested with discretion to take into account the positions of other persons in the case.

55. In practice, this makes it possible to identify threats to competition in circumstances where, without expert consultations or surveys, the AMCU might not have seen signs of competition problems.

56. At the same time, in the course of reforming its legislation, the AMCU is open to establishing more stable mechanisms for cooperation in the area of imposing remedies. While maintaining its independence, the AMCU confirms the need to conduct sectoral consultations before intervening in markets that are of significant social or economic importance.