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**Roundtable on:
Prioritization and resource allocation as a tool
for agency effectiveness**

**Contribution
by
Ukraine**

The views expressed are those of the author and do not necessarily reflect
the views of UNCTAD.

Background (extent of problems, limited resources of competition authorities)

The role of competition in the economic processes is gaining significance. The last global crisis has revealed the need to find reserves to ensure the protection and promotion of competition as one of the most effective means to ensure the growth and increase economic efficiency.

The Antimonopoly Committee of Ukraine is a government agency that exercises control over the compliance with the legislation on the protection of economic competition.

The main fields of the Committee's activity are:

a. state control over the compliance with legislation on protection of economic competition on the basis of legal equality of the entities and the priority of consumers; prevention, detection and termination of violations of the law on protection of economic competition;

The bodies of the Antimonopoly Committee of Ukraine terminate about 4,500 violations of the law on protection of economic competition each year. During 2010 - 2012, the number of violations that were detected and terminated by the Committee has increased by 77 percent;

b. control of mergers, concerted actions of economic entities.

Each year the Committee considers more than 800 applications for economic concentration and concerted actions of economic entities.

c. promoting fair competition;

Within this field, in 2012 the Antimonopoly Committee of Ukraine has worked on more than 2 thousand regulations and other decisions and draft decisions of public authorities;

d. control over the creation of a competitive environment and the protection of competition in public procurement.

The permanent administrative board for handling complaints about violations of the law on public procurement held 296 meetings of the Board in 2012, at which

1440 decisions were taken. A total of 51 decisions were appealed to the court, which is only 3.5 percent of the total number.

The level of complexity of the problems to be solved in order to protect competition increased significantly.

At the same time, the number of AMC employees declined in 2012 compared to 2011 by almost 10 percent, from 934 to 846 persons. The above reduction took place within the framework of administrative reform in the country (most of central executive bodies cut their staff).

From the above an urgent need for efficient distribution of available resources follows.

The main ways of enhancing the effectiveness of competition authorities, in accordance with the Committee's experience are:

- optimization of the structure;
- prioritization of activities;
- an integrated approach to the study of markets;
- wider application of measures to prevent violations of the law on protection of economic competition;
- improvement of the legal framework of competition authorities;
- use of the opportunities provided by international cooperation;
- use of scientific potential of scientific and technological progress, informatization.

Optimization of the structure

In 2012, there have been significant changes in the structure of the AMC headquarters. They were to move from functional to sectoral and functional principle of structuring. On the basis of departments that were separately engaged in market research and investigations of cases, six divisions along sectoral lines were established, which combine the functions of both market research and investigation of offenses. Such structure allows for more rapid and complete human resources management in order to focus on prioritized areas of activity.

Determination of short-term and long-term priorities in the work of competition authorities

The Antimonopoly Committee of Ukraine determined priorities for the coming year for short term tasks, which are enshrined in its annual work plan and annual report on the activities for the year.

These areas are identified and selected on the basis of relevance, the need for speedy resolution, the importance to the economy and society and the impact on competition. Tasks scheduled in a certain direction are planned either for full implementation within one year, or as the result of a specific phase as part of achieving the ultimate objective set out in the relevant direction.

For example, questions may relate to measures designed to prevent, detect and deter violations of the law on protection of economic competition in specific markets in which the analysis revealed significant problems, development regulations, implementation of which will have a positive impact on competition, strengthening and improving the international cooperation in the field of competition and so on. Thus, in 2013, the Committee identified six groups of markets in which it is concentrating its efforts on the study of competition and prevention of monopolization, detection and prevention of violations of the law on protection of economic competition:

- of drugs;
- connecting objects to the utilities (electricity, gas, heat, water and sanitation) and municipal services;
- collection, disposal, recycling of waste;
- related services in the provision of administrative services;
- funeral services;
- services in the lease of agricultural land.

It should be noted that it was initiated by the Antimonopoly Committee that the National Action Plan for 2013, approved by the President of Ukraine, included measures to increase competition in markets, to ensure the development of

competition policy and legislation of Ukraine, taking comprehensive measures to prevent, detect and deter violations of legislation on the protection of economic competition, particularly in the areas of drugs, the connection of construction, collection, disposal, recycling and disposal of household waste and related services, in the provision of administrative services and more.

Another mechanism for determining the short-term priorities of the competition authorities is due to the fact that a certain number of petitions and cases that are being reviewed are not essential for competition. In case of a more selective approach, agencies would focus most of its resources on cases that pose a serious threat to competition.

Ukrainian legislation on protection of economic competition provides relevant test. In particular, by Article 36 of the Law of Ukraine "On Protection of Competition" states that in cases where the act or inaction that has signs of violation of the legislation on protection of economic competition has no appreciable effect on competition in the market, the applicant may be denied the consideration of the case.

A more difficult task is to identify priorities for the long term.

Strategic planning should ensure the solving of systemic problems across the country. In case of a competition authority – there is a set of questions the solution of which requires joint coordinated efforts of all branches of government, business and society, as competition is provided by all market participants. This ensures efficient use of available resources in the department and eliminates the causes and conditions that lead to the prevention, elimination, restriction or distortion of competition. This mechanism is used as a preventive measure and as an activity related to the enforcement.

One of the mechanisms determining the long-term priorities of the AMC is the development of a long-term National Programme for the Development of Competition in Ukraine.

In order to solve complex system problems that currently exist in the area of competition law and policy, the Committee initiated in the National Action Plan for 2013 to implement the program of economic reforms in Ukraine in the years of 2010-2014, which was approved by the President of Ukraine, and the need for the National Program of competition in the years 2014-2024 and its approval on the legislative level.

To fulfill this task, the Antimonopoly Committee of Ukraine developed the concept of the program, which last September was approved by the Cabinet of Ministers of Ukraine.

The Program includes three components:

creating an effective competitive environment and the development of competition in product markets as a means for sustainable economic growth;

creating conditions for the effective functioning of commodity markets (stating that the draft program focuses on the gradual lowering of monopolization in certain commodity markets);

improvement of mechanisms of state regulation for the maximum satisfaction of the people of Ukraine.

To participate in the development of this program all levels of government agencies, executive authorities, local self-governments were involved.

The program will create a platform, in particular, to eliminate structural barriers to competition in the Ukrainian economy, to eliminate the artificial regulatory barriers that impede market entry and development of new businesses. Key role in implementing the provisions of the Programme is given to the Committee.

An integrated approach to market research

One way of improving the efficiency of competition agencies and a more rational use of available resources is to improve the work on market research, since

its implementation requires significant involvement of human resources in view of the number of product markets that are subject to analysis, and the amount of information processed during market research.

The target was to fully research the markets of strategic importance to the economy and the impact on consumer welfare of the country. Committee began researching new markets that were previously not covered. Last year, the bodies of the Committee conducted research of over 600 national and regional markets throughout Ukraine. In 2012, a particular notion was given to medication market, housing and communal services, fuel resources, hotel services, food. Markets in which the Committee will focus in 2013 are defined in the priority areas of activity for the current year and in the National Action Plan for 2013.

The nature of such research changed significantly. An integrated approach is used widely to them. It provides:

- Participation in market research of the whole system of the Committee or several regional offices;
- Involvement of experts from other authorities and institutions in the research;
- A broad public discussion of research results;
- Preparation of the Government's proposals for the development of competitive markets;
- Termination of violations of the law on protection of economic competition that were identified in the market study.

In connection with the use of an integrated approach it then becomes possible to optimize the use of the Committee's resources during inspections, which are one of the main tools of identification of violations of legislation on protection of economic competition. The number of inspections of businesses is gradually reduced, which meets the government policy to reduce the burden on business. The requirements for their performance were strengthened. As a result, in 2012 the effectiveness of inspections conducted by the Committee significantly increased. In 94 percent of the

results of inspections were the beginning of proceedings for violations of the law or providing recommendations for termination of such violations.

Preventive measures as a mechanism for rapid response to the market situation (recommendations) and competition advocacy

A very efficient way for optimizing the resource allocation of a competition authority is a wider use of the measures that prevent violations of the law. Implementation of these measures requires, as a rule, less time and work than complete investigation, and at the same time prevents actions that had signs of violations, eliminates their consequences, if such actions did not cause significant damage to competition, consumers and society provides performance objective of the competition agency.

In 2012, the number of offenses suspended by the Committee exceeded 5800, almost 30 percent more than in 2011. The increasing load demands Committee to seek ways of exercising its powers, in a way which would allow it to not lose efficiency and productivity of work.

The use of the mechanism of the recommendations provided by the legislation on protection of economic competition as a mechanism to influence the situation in the market in case of detection of a violation or possible commission of a violation of the case when the analysis of the market situation indicates its likelihood, allows to quickly eliminate violations or prevent them. Practical experience shows that this method is effective, can cover a large number of markets, including national, and the inputs of the Committee are much smaller. Monitoring the implementation of the recommendations suggests that such methods of work of the Committee gave positive results. For example, in 2012, as a result of actions taken by the Committee there was a total of 5,820 suspended violations of the law on protection of economic competition, of which 3711 were prevented by adopting decisions on the use of statutory responsibility and 2109 - by providing guidance regarding the termination of action (inaction) containing signs of violation. The number of discontinued

violations, as a result of receiving AMCU recommendations, constituted 36 percent of the total.

Along with the legal mechanisms to prevent violations in the field of competition law by issuing recommendations, another effective way of preventing the violations of the law on protection of economic competition is competition advocacy. It also usually requires less expenditure of resources than in the cases of violations. In the Committee's work competition advocacy is the support of competition by measures other than enforcement, including assessment of the impact on competition regulations and conducting outreach work. Competition advocacy has two direction vectors – to the other government agencies and to the public.

For example, during 2012 the Committee prepared and published over 2 thousand information related decisions and activities of the Committee on the official website, including 1440 decisions of the Permanent Administrative Council of the Antimonopoly Committee of Ukraine on complaints about violations of the law on public procurement. More than 40 thousand informational materials relating to the Committee's work were published on the Internet, over the 600 - in print media. During the year the Committee's management has done more than 500 appearances on television and radio.

Active work in these areas provides a significant savings of Committee's resources because the work to prevent violations of the law on protection of economic competition, raise awareness of market participants in the competition and legislation in this area leads to a decrease in the number of violations and prevents anti-competitive decision-making by government bodies at all levels.

Improvement of legislation on protection of economic competition

Considerable reserve of capacity optimization of competition authorities is related to the improvement of the procedural framework of their activities through changes in competition law.

For example, the Committee developed a draft Law of Ukraine "On Amending the Law of Ukraine "On Protection of economic competition" to provide evidence in cases considered by the Antimonopoly Committee of Ukraine." The bill is developed to regulate the procedures to be followed by the bodies of the Committee to receive evidence in the cases of violation of the legislation on protection of economic competition. The adoption of this law will increase the transparency and predictability in the law enforcement activities of the bodies of Committee, the effectiveness of case investigation on violation of the legislation on protection of economic competition, which will promote sustainable use of Committees' resources. This is defined by the possibility, provided by this draft law, to obtain direct evidences (in particular regarding the collusion) without wasting resources on collecting circumstantial evidences.

Verkhovna Rada of Ukraine adopted the draft Law of Ukraine "On amendments to some legislative acts of Ukraine concerning the delimitation of powers of public authorities in the spheres of natural monopolies and in communications" that was developed by the Committee. The law provides a clear separation of powers of the Antimonopoly Committee of Ukraine and the regulators of natural monopolies. Authority to determine the subjects of natural monopolies and maintain a register of economic entities in order to ensure their effective government regulation was obtained by the state regulators. Antimonopoly Committee forms consolidated list of natural monopolies based on the registry, controls and monitors compliance with competition law by these entities. Also some duplication of government authorities' powers in the field of pricing control and some conflict rules were eliminated.

The focus of legislative changes in the competition laws of Ukraine is determined by the leading principles and approaches elaborated by international organizations in this field. The work on improving the legislation on protection of economic competition continues.

To optimize the Committee's work regarding the control after mergers between undertakings a bill was developed in order to increase the thresholds, after the excess of which it is necessary to obtain permission for a merger from the Antimonopoly Committee.

The usage of scientific potential (Center for comprehensive studies on antimonopoly policy)

As the competition authorities must use a variety of information from many sources, which is complex and large in scope, apply methods of mathematical analysis, perform market analysis, resolve legal issues, etc. it is appropriate to involve the scientific potential as a means of solving a certain range of issues.

Under the Antimonopoly Committee operates Center for comprehensive studies on antimonopoly policy.

The usage of research results and conclusions of experts upgrades the quality and validity of the Committee's work, reinforces the analytical component of researches and investigations carried out by the Committee, including the study of markets.

The enhancement of the Committee's efficiency is promoted by the use of technological advancements and computerization. In the Committee there have been created information databases that are used in work, including the basis for the purposes of monitoring and analyzing of the wholesale and retail markets of oil and petroleum products "Hardware-software complex" Analysis of the petroleum products"; concentration of business entities.

Advanced training of workers of competition departments

One of the provisions of enhancement of efficiency of an authority is the enhancement of training and qualification requirements.

In the Antimonopoly Committee of Ukraine on December 31, 2012 the number of employees in the central office was 232 persons. Of these, with higher education - 228 people (particularly economics - 108, law - 53, with scientific degree - 10). Number of employees in regional offices is 558 people. Of these, with higher

education - 551 persons (particularly economics - 329, law - 142, with a scientific degree - 5).

The Committee carries out consistent work to raise the educational activities of workers as executives and professionals. Learning and sharing experiences include both short-term events (seminars, round tables, conferences) and long-term - education and training in the relevant areas. For example, a training in European integration, public administration, the use of economic analysis, legal practice and more.

The usage of the opportunities provided by international cooperation

The Antimonopoly Committee of Ukraine cooperation with international organizations dealing with the promotion and protection of competition helps to effectively use limited resources and prioritize the work of the Committee.

The Antimonopoly Committee of Ukraine cooperates with the United Nations Conference on Trade and Development (hereinafter - UNCTAD). Since 1998, the official representative in Ukraine of the Intergovernmental Panel on legislation and policy in the field of competition (IP) is the Chairman of the Antimonopoly Committee of Ukraine.

The objective of IP is to analyzing and improvement of international principles on the implementation of competition policy and law, the harmonization of competition and trade policies and so on. IP solutions are reflected in policy and legal instruments that are developed with the participation of the Antimonopoly Committee of Ukraine.

A significant step towards increasing of efficiency of international cooperation was initiated by the Antimonopoly Committee of Ukraine UNCTAD review of policies and legislation on competition in Ukraine (hereinafter - Review).

These conclusions and recommendations of the Review can be used in the preparation of strategic policy documents for the development of competition in all sectors of the economy of Ukraine.

Since 1994, the Antimonopoly Committee of Ukraine maintains relations with the Organization for Economic Cooperation and Development (OECD), in part on the

development of competition, increased cooperation between national competition authorities, and supports policies focused on consumer protection.

The Antimonopoly Committee of Ukraine made all necessary arrangements for obtaining the status of the observer in the Competition Committee of the OECD. According to the OECD Council on the 22 of November 2011 Ukraine gained observer status in the OECD Competition Committee. The above status is granted for two years - until the 31 of December 2013 on the principles defined in the Council Resolution on the participation of non-OECD countries in the official bodies of the OECD.

With the support of the OECD, the staff of the Committee was able to systematically improve their qualifications by taking part in the work of official bodies of the OECD.

In addition, in the framework of development of cooperation with the OECD and to make successive steps towards Ukraine's permanent membership in the OECD Competition Committee on the 28 - 29 of January, 2013 an international seminar on "Strategy of development of competition law in Ukraine and review of international experience" was held in Kiev, which was attended by leading figures of the OECD, UNCTAD, the world's leading competition authorities and the government of Ukraine, owners and top managers of companies operating in Ukraine.

At the same time, an important step towards strengthening cooperation between Ukraine and the OECD was the initiation of Ukraine's joining as an associate member with the OECD Competition Committee.

Since 2002, the Antimonopoly Committee of Ukraine is a member of the International Competition Network (ICN), an international organization, the sphere of activity of which is the enforcement of the competitive rules.

The Antimonopoly Committee of Ukraine is a member of specialized working groups on the formation of the pro-competitive consciousness and on mergers. Activities of the working group take place on a regular basis by completing a questionnaire and other questionnaires used for analytical work and research projects that are distributed among network members. Also, representatives of the Committee participate in annual workshops and ICN conferences.

At the same time, there is intensified bilateral cooperation in particular, with the German competition authorities (Bundeskartellamt), the U.S. Federal Trade Commission and the Authority for Consumers and Markets of the Netherlands.

The Committee actively takes advantage of adopting the best practice in the field of competition, especially developing international cooperation and using additional features of such cooperation for the exchange of experience and training of the Committee's staff.

Exchange of experience between competition authorities on a bilateral and multilateral basis promotes the usage of best practices and recent developments in the field of competition.

International cooperation is one of the considerations for setting priorities in the Antimonopoly Committee of Ukraine in the field of protection of competition.

Thus, the usage of all of the above improvements of a competition authority is a tool to increase its effectiveness. A set of tools can be selected by each authority based on its experience and capabilities, but better usage of all mechanisms will provide the optimization and efficiency of operations, prioritization with scarce resources of a competition authority.