



Ukraine<sup>1</sup> is located on the edge of the Black Sea, and the Sea of Azov, bordering Belarus, Poland, Russia, Romania, Slovakia and Hungary.

During the latter part of the eighteenth century, the Russian Empire absorbed the ethnographic territory of Ukraine. Following the collapse of the Czarist Russia in 1917, the country enjoyed a short period of independence, before being re-occupied in 1920.

Ukraine declared its independence in 1991 with the dissolution of the Soviet Union. The first president of independent Ukraine, Leonid Kravchuk, focused on state- and nation building at the expense of political and economic reform. Leonid Kuchma, his successor, accepted an IMF-backed reform programme following his election in 1994, but tension between the Parliament and the President hampered progress on market reforms. Kuchma's scandal-ridden second term in office, in 1999-2004, featured backsliding on democratisation and an ever more powerful role for oligarchic elites in politics. However, the election of the opposition leader, Viktor Yushchenko, to the presidency in December 2004 has led to greater political openness and reduced the political and economic power of Ukraine's oligarchs<sup>2</sup>.

Democracy, economic reforms and privatisation have recently taken hold in the country with the consolidation of civil liberties.

### Economic Trends<sup>3</sup>

In 1991, Ukraine abandoned central planning, and started the transformation of its economy. The country inherited a highly monopolised structure of economy; therefore, de-monopolisation and the development of competition have been amongst the main goals of structural changes.

PROFILE	
Population:	48.4 million***
GDP (Current US\$):	49.5 billion***
Per Capita Income: (Current US\$)	970 (Atlas method)*** 4,870 (at PPP)**
Surface Area:	603.7 thousand sq. km
Life Expectancy:	69.5 years**
Literacy:	99.6 (of ages 15 and above)**
HDI Rank:	70**
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

Like much of the former Soviet bloc, independent Ukraine inherited an economy based on heavy industry and reliant on technology that had largely been superseded in the West. Ukraine's main challenge since 1991 has been to diversify away from many of the industries – steel, chemicals, shipbuilding, coal, machine-tools and weaponry – that relied heavily on government subsidies and became even less viable after traditional export markets collapsed. Ukraine's success in diversifying away from traditional sectors has been gradual at best.

When calculated at purchasing power parity (PPP), Ukraine's GDP ranks well below that of its central European neighbours and Russia. GDP per head at PPP was estimated at around US\$5,200 in 2003, around half of that in neighbouring Poland and still well below Russia.

### Competition Evolution and Environment

The collapse of the centrally planned economy, together with late and inadequate reforms, brought hyperinflation,

\* Original paper submitted in September 2004. Revised in March 2005 & January 2006

1 <http://www.cia.gov/cia/publications/factbook/geos/up.html>

2 <http://www.economist.com/countries/Ukraine/profile.cfm?folder=Profile-FactSheet>

3 <http://www.economist.com/countries/Ukraine/profile.cfm?folder=Profile%2DEconomic%20Structure>

<b>Table 99.1: Dynamics of the Number of Monopolised National Markets in the Ukraine</b>		
<b>Branch</b>	<b>The number of monopolised national markets</b>	
	<b>In 1994</b>	<b>In 2000</b>
Mechanical engineering	303	253
Chemical industry	124	91
Metallurgy	93	71
Forestry, paper industry	25	11
Light industry	55	30
Other branches	100	106
<b>Total</b>	<b>700</b>	<b>562</b>

*Source: the Anti-monopoly Committee of the Ukraine (AMC) Annual Report 2000*

shrinking output, rapid currency depreciation and high annual budget deficits in the early 1990s. A stabilisation programme, introduced in the mid-1990s, was relatively successful (EIU, 2002), although structural reforms in several important areas were lagging behind.

Although the State privatised more than 80 percent of all enterprises (accounting for over 60 percent of output) by early 1999, controlling shares in many privatised enterprises remained in government hands, maintaining the influence of former communist directors. Ukraine's limited progress has reflected the lack of interest among ruling elites in relinquishing their tight control over economic and bureaucratic powers.

Around 6,000 enterprises remained under state control. These enterprises were considered of strategic importance to the country, including those in heavy industry, defence, energy, transport and communications (EIU, 1996). A regulatory apparatus designed to protect its enterprises from domestic competition and from foreign ownership and tax reform remains in place.

The reduction in the quantity of monopolised national markets has been a general tendency. However, from 2000 to 2002, the quantity of monopolised national markets decreased only by two. Thus, the process of demopolisation of the national markets has basically stopped.

The number of enterprises with a monopoly position was approximately 0.6 percent of the total number of enterprises in Ukraine in 2000. According to data from the Ministry of Economy, by the end of 1999, enterprises having a monopoly position in national markets produced 23.1 percent of output, and these enterprises employed 13.3 percent of the total workforce. Counting local markets as well, the share of the monopolised sector in Ukraine was

about 40 percent of GDP in 2000 (AMC 2000). These facts confirm that the Ukrainian economy is still highly monopolised.

Therefore, the economic developments and demopolisation of the Ukrainian economy have been considerable but not sufficient. Many markets are monopolised due to administrative reasons. Entry of new firms has been limited, and they face many obstacles. The level of FDI is low and mostly limited to a small number of profitable industries. Ukrainian foreign trade is liberalised and domestic producers face severe import competition, but not in all markets.

### **Competition Legislation**

The legal basis, for the development of a market economy, was founded by such important laws as the Law on Property; the Law on Enterprises; the Law on Entrepreneurship; the Law on Investment; the Law on Foreign Economic Activities; and others, adopted in 1991-1993. The Law on Entrepreneurship determines general legal, economic, and social provisions of performing entrepreneurial activity (entrepreneurship) by citizens and legal entities within the territory of Ukraine, and guarantees freedom of entrepreneurship and state support thereto. The Law on Enterprises defines an enterprise as an independent business statutory entity with the rights of a legal entity, which performs certain activities with the purpose of generating profit. It also describes the types of enterprises and their associations that can be created in Ukraine.

According to the Constitution of Ukraine, adopted in 1996, everyone is free to own, use, and dispose off his or her property. The right for private property is defended by the State. Everyone has the right to engage in entrepreneurial activity that is not prohibited by law. The state guarantees the protection of competition. Abuse of a monopoly position in a market, unlawful restriction of competition and unfair competition are prohibited by the Constitution. The State defends consumer rights, and controls quality and safety of goods and services.

Ukraine adopted its first antitrust law – the Law on Limitation of Monopolisation and Prevention of Unfair Competition in Entrepreneurial Activity – in February 1992, and established its competition authority – the Antimonopoly Committee of Ukraine (AMC) – in 1993.

The Law defined the legal grounds for limitation of monopolisation, prevention of unfair competition in entrepreneurial activities, and the exercise of state control concerning the norms of Anti-monopoly legislation. It was mostly concerned with abuses of dominant position, discrimination of economic entities by state organs, and cases of unfair competition. Anticompetitive concerted actions and merger control were described in much less

detail. Monopoly positions were obtained automatically if a market share exceeded 35 percent. Thus, when assessing dominance, the degree of competition in a market was disregarded, and the decision was based on a mere market share, making it too easy to label a firm as a monopolist.

An abuse of dominant position is determined when the entity concerned:

- imposes onerous contract terms;
- limits or stops production, which can result in a shortage, or in setting monopoly prices;
- refuses to sell or buy goods in case of an absence of alternative sources or ways of selling or buying, which can result in a shortage, or in setting monopoly prices;
- creates barriers to entry into (or withdrawal from) a market;
- sets discriminatory prices that restrict the rights of consumers; and/or
- sets high or low prices, which can result in violation of the rights of consumers or in restriction of competition.

**Box 99.1 Abuse of Monopoly Position by the *Vinnytsamiasprom* and *Vinnmolprom***

In 1995, the *Vinnytsamiasprom* (Vinnytsa Meat Industry) and *Vinnmolprom* (Vinnytsa Milk Processing Industry) joint stock companies were monopolies in the relevant regional markets of meat products and butter, respectively.

When prices were liberalised and the Cabinet of Ministers issued resolution No. 733 “On Pricing under the Conditions of Reforming the Economy” on October 21, 1994, both enterprises increased wholesale prices for meat products and butter to the level of monopolistic prices. Moreover, *Vinnmolprom* had previously decreased the volume of wholesale butter, which caused a shortage of this product in the market.

After the AMC took action, the *Vinnytsamiasprom* and *Vinnmolprom* joint stock companies ceased violating the regulations and remitted the illegally gained profits to the state budget.

Discrimination of economic entities by state organs includes, for example:

- prohibition of establishing new enterprises;
- imposing restrictions on performing certain activities or producing certain types of products;
- granting privileges or other advantages to some economic entities; and
- prohibition of sale of goods from one region into another.

The Law was quite inadequate in dealing with economic concentration. It did not define the circumstances under

which an approval of the Anti-monopoly Committee (AMC) for a concentration is required, nor does it delineate the conditions of such an approval. These issues are to be covered by resolutions and regulations of the Government and the AMC. The relevant regulations defined that the approval is generally required if at least one of the participants of concentration is a monopoly, or if total assets or total turnover of the participants exceeds a certain threshold. It was not explicitly specified when the concentration should be approved or rejected until 1998, when the AMC amended its regulations. According to the new rule, a concentration shall be approved if it does not result in monopolisation of markets, or in a substantial restriction of competition, or if the positive effect in public interest outweighs the negative effect of restriction of competition.

Until 1997, the Law also covered unfair competition that included unlawful use of the business reputation of another economic entity, discrediting competitors, unlawful collection, disclosure and use of commercial secrets, and unfair advertising. A separate unfair competition law: the Law on ‘Protection Against Unfair Competition’ was adopted in 1996, and came into force on January 01, 1997. The new law broadens the scope of activities, which are qualified as unfair competition, for example, comparative advertising, instigating a boycott, bribing an employee of a competitor, and gaining an unlawful advantage in the course of competition. The AMC remains responsible for considering such cases.

Gradually, the changes in the economy rendered the competition legislation of the first generation arcane, and led to the adoption of a new competition law. “The Law of Ukraine on the Protection of Economic Competition”, was therefore, adopted in 2001, and came into force in March 2002.

The main features of the new Law:

- The notion of joint dominance of several economic entities in a market is introduced;
- The degree of competition in a market is also taken into account, and a firm with 35 percent of the market is not presumed dominant if it is exposed to substantial competition;
- The list of abuses of dominant position has not changed significantly, and the list of anticompetitive concerted actions has been extended; and
- A procedure of the possible authorisation of anti-competitive concerted actions is introduced, and the AMC can allow such actions if their participants prove that the actions promote efficiency and development. The concerted actions may not be authorised if, as a result, competition is substantially restricted in the whole market or in a significant part thereof.

The pre-notification procedure is rather difficult for the specialists of the AMC, due to the lack of experience and resources. It is even more burdensome for the entrepreneurs because it requires the payment of a fee, preparation of documentation, and drawing on consultants. It is possible to say that introduction of the pre-notification procedure emerged more from the desire of Ukraine to approximate to the legislation of the European Union, than from efficiency reasons.

The new Law is more focused on the control of economic concentration – an issue previously covered mostly by secondary acts of legislation. The Law describes types of economic concentration and the cases when it requires authorisation by the AMC, as well as the conditions of granting such permission. New merger provisions stipulate the necessity of notification of a merger only if the total assets or the total sales of the participants of the concentration exceed certain monetary limit. The AMC allows the concentration if it does not result in the monopolisation or in the substantial restriction of competition in the whole market or a significant part thereof.

In general, the new Anti-Monopoly law is much more detailed. It contains many important definitions and description of procedures. This is apparent because the draft of the law was prepared by the AMC and was based on its experiences from 1993-2001.

### **Competition Authority: The Anti-monopoly Committee of Ukraine**

The Anti-monopoly Committee of Ukraine is a central body of executive power with a special status, and its purpose is to ensure the protection of competition. The adoption of the Law on the Anti-monopoly Committee of Ukraine in 1993 and the appointment of the Committee's state commissioners inaugurated its full-scale activity. The network of territorial offices was established in 1994-1995. The Committee along with its regional offices constitute the system of bodies of the Antimonopoly Committee of Ukraine.

The Committee is subordinate to the President of Ukraine and is accountable to the Supreme Rada (Parliament) of Ukraine. The AMC includes the Chairman and ten state commissioners. The Chairman is appointed and dismissed by the President of Ukraine with consent of the Parliament. The term of office of the Chairman and the State Commissioners is seven years.

The basic tasks of the AMC are:

- exercising state control over the observance of Anti-monopoly legislation;
- preventing, detecting and terminating violations of Anti-monopoly legislation;
- exercising control over economic concentration; and
- promoting the development of fair competition.

The prosecution and decision-making are integrated within a single office. The Anti-monopoly Committee can require state organs and economic entities to terminate actions that indicate violations of Anti-monopoly laws. The AMC formulates and submits for consideration drafts of legislative acts that regulate matters concerning the development of competition and competition policy, and de-monopolisation of the economy.

The Law of Ukraine on the Protection of Economic Competition, adopted in 2001, has had an ambiguous impact on the competence of the AMC. On the one hand, the AMC obtained more freedom in making decisions, because the law contains a lot of relative notions like 'considerably', 'substantially', 'unjustified' etc. This enables the Committee to decide on the severity of violations, and depending on circumstances, the case can be closed or a recommendation can be issued. But this also gives more discretion to the officials that have to make concrete decisions.

On the other hand, the Government may now authorise concerted actions and concentration that were not authorised by the AMC, if the positive effect in public interests outweighs the negative consequences of the restriction of competition. The economic entities that are refused authorisation of concerted actions or concentration

#### **Box 99.2: Discrimination by the Perevalsk District State Administration of Lugansk Region**

In 1997, the Perevalsk District State Administration issued an order "On Measures Concerning Insurance of Storage of Material Values of Enterprises, Institutions, and Organisations of All Ownership Forms and Putting in Order Collection, Storage, Processing, and Transportation of Scrap Ferrous and Nonferrous Metals".

Some clauses of the order prohibited private citizens and entrepreneurs from any activities associated with collection, storage, processing, and sale of scrap ferrous and nonferrous metals, without the agreement of the Perevalsk District State Administration. Heads of motor transport, Department of railroads, and road militia were ordered not to allow transportation of scrap metal and cable products, without written permission from the district state administration.

The Lugansk Territorial Office of the AMC held that the action is a discriminatory act by state organs against entrepreneurs, in the form of establishing prohibition with respect to certain entrepreneurs and groups of enterprises. The Perevalsk District State Administration, having admitted the illegality of its actions, repealed the mentioned order.

by the AMC have the right to apply to the Ministry of Economy for such authorisation within 30 days. The Ministry then organises a special Commission and re-examines the case and makes a proposition to the Government on granting permission or rejecting it. The Government ultimately makes a final decision concerning the application.

The reasons for the adoption of such a provision in the law are not completely clear. If an economic entity does not agree with the decision of the AMC, it can appeal to the courts. The procedure of re-examination of cases by the Government will lead to a duplication of functions of the AMC, and require more resources and experienced staff. It can also lead to decisions favouring the development of industry over competition. In general, this provision significantly limits the independence of the competition authority, and may result in the adoption of more cautious decisions by the AMC, considering their possible re-examination, which could damage the image of the Committee.

The share of decisions and resolutions issued by the AMC that were appealed and reconsidered by courts, varied around two percent of the total number of decisions. Decisions repealed by courts usually constituted less than 0.5 percent of all decisions and resolutions. Thus, it is possible to conclude that in an overwhelming majority of cases the AMC strictly followed the law and acted within its authority.

**Box 99.3: Abuse of Monopoly Position by  
*Ukrzaliznytsia* (Ukrainian Railroad)**

In 1996, three enterprises complained to the AMC about actions of the *Ukrzaliznytsia* (Ukrainian Railroad). They alleged that the deputy minister of transport of Ukraine and the general director of *Ukrzaliznytsia* issued an order, according to which, enterprises that owned freight cars were obliged to purchase a set of wheels for 10 years in the quantity of 9.4 percent of the total number of their own freight cars, and to transfer them to a car depot of the relevant railroad. If an enterprise refuses to purchase and transfer the sets of wheels, the railroad would refuse to accept orders for freight with its cars.

Railroads occupied monopoly position on the market of rendering services associated with the use of tracks. Thus the enterprises being owners of cars had to unconditionally fulfil the requirements of railroads in order to do business. As a result of the investigation, *Ukrzaliznytsia* admitted wrongdoing and terminated the violation.

## Sectoral Regulation

### *Telecommunications Sector*

The regulatory framework for the telecommunications industry in Ukraine is established by the Law on Communications adopted in 1995, the Law On Radio Frequency Resource, and the Law on Natural Monopolies, both adopted in 2000.

The Law on Communications, which allowed for private operators to enter the market, liberalised the telecommunications market in 1995. Up to now, there has been no independent regulatory body established, although the Law stipulates its functions and responsibilities, and the State Committee on Communications and Information (SCCI) performs the functions of a regulator. The Law on Natural Monopolies states that public telephony is a natural monopoly, whilst services of national long-distance and international telecommunications are adjusted markets, so they are subject to state regulation.

Most of the Ukrainian telecommunications market is dominated by a state owned corporation *Ukrtelecom*, which owns all transmission facilities and provides most of the fixed-line telephone services. It has the largest number of subscribers. The company was originally formed as an association of regional telecommunication enterprises from each region of Ukraine. Between 1993 and 1998 all organisations involved in the planning, building and operating public telecommunications network were consolidated into *Ukrtelecom*. The company continues to be in public ownership, as the government shelved plans to privatise it.

The international calls market is the most competitive amongst telecommunications markets in Ukraine, because of the modern technologies, which allow operators to lower their prices despite the regulation. Market for local calls is fully dominated by *Ukrtelecom*. Wireless mobile communications is the most active sector in the industry. The share of mobile lines in the total telephone lines has been growing rapidly. By 2001, more than 80 percent of mobile customers were served by two operators: *UMC* and *Kiev Star*. Increased competition has pushed consumer prices down, led to increased quality of service, and added to the number of supplementary services.

The SCCI sets tariffs on the basic telecommunication services. Any proposed changes are reviewed and approved by the Ministry of Economy and the government. Tariff changes are usually initiated by *Ukrtelecom* (ICPS, 2001). Tariff regulation is based on a pure cost-of-service regulation. There are no rules as to the frequency of tariff revisions, which makes the environment unpredictable.

### Electricity Sector

Ukraine started reorganisation of its electricity industry in 1994. The National Electricity Regulation Commission (NERC) was created in 1994 by a presidential decree to act as a regulatory body. By 2000 the industry has suffered from such problems as non-payments and non-monetary settlements; the level of cross-subsidisation was high. There were seven generating companies, and 27 regional distribution companies. By now some of the regional distribution companies have been gradually privatised. The rest of the companies are still state-controlled (IER 2001, 2002).

### Consumer Protection

Consumer rights are protected by the Constitution of Ukraine. The Law on Consumer Protection was adopted on May 12, 1991, and it was amended several times. The Law regulates relations between consumers of goods and services, and producers and sellers, delineates the rights of the consumers, and establishes a mechanism for protection of those rights. According to the latest version of the Law, consumers are entitled:

- to protection of their rights;
- for a guaranteed level of consumption;
- to appropriate quality of goods and services;
- to safety of goods and services;
- to obtain the necessary information about goods and services;

#### Box 99.4: Unfair Competition on the Part of the Firm *Sanitas*

In 1999, *Sanitas* opened four stations, for the washing and cleaning (sanitary processing) of vehicles, on the entry roads leading to the city of Kharkov, next to the posts of the State Automobile Inspection. The firm also installed stands with the text “*Attention! The entrance to Kharkov and the use of the roads of the region by cars are carried out only through the station of sanitary processing*”.

Employees of the firm, dressed in police look-alike uniforms stopped cars and coerced the drivers to have their cars processed in the stations. Such ‘sanitary processing’ did not have any legal grounds, and was being done without use of any detergents, just with plain water. In fact, the firm was providing the service of washing cars, and it was deceiving customers concerning the necessity of such service.

The Commission on Protection of Consumer Rights qualified the actions of the firm as a violation of the Law on Protection of Consumer Rights. Moreover, the AMC held that the actions of the firm as gaining an unlawful advantage over its competitors in the market of services of washing cars. The firm was fined.

#### Box 99.5: Privatisation of the *Krymhleb* Enterprise

In 1999, according to an assignment given by the Government, a Commission, including a representative of the AMC, examined a situation of privatisation of the *Krymhleb* (Crimean Bread) Enterprise. The AMC proposed privatisation of the enterprise with its preliminary reorganisation, taking into consideration the fact that the enterprise occupied a monopoly position in the regional market of bread and bread products, and included 10 subsidiaries that were not tied by technological links.

According to the experience of the AMC, the prices of bread were more stable and sometimes even significantly lower in the regions of Ukraine, where the baking industry was previously de-monopolised. Nevertheless, the organs of the State Property Fund and the Ministry of Agro-industrial complex made a decision on privatisation of the enterprise, without breaking it up.

- to the reimbursement of losses and damages caused by goods and services of inferior quality;
- to apply to courts of law for the protection of their consumer rights; and
- to create public associations for consumer protection.

The State Committee for Consumer Protection was first established in July 1992. Since 2002 the main body in the area has been the State Committee of Ukraine for Technical Regulation and Consumer Policy. The Committee has been empowered with extensive rights, such as the right to conduct investigations, to inspect the quality of goods and services, to prohibit the sale of goods and services that do not meet the quality or safety requirements, and to fine violators.

The main impediment for the development of consumer rights protection in Ukraine has been the low awareness amongst the consumers of their rights and of the ways to defend them. One of the main goals of the Programme of Consumer Rights Protection for 2003-2005 is to educate the people and to encourage them to defend their rights more actively. There has been some indication that the Ukrainian consumers have started to defend their rights more vigorously. For example, in Kiev, the capital, with more than three million of inhabitants, only 733 complaints were filed in 1996. This number increased to 2072 in 1999 (Zerkalo Nedeli 2002).

### Concluding Observations and Future Scenario

To summarise, the AMC was quite successful in detecting and terminating the violations of Anti-monopoly legislation. At the same time, it generally failed in preventing them, which can be illustrated by the constant growth and the stable structure of the violations. The Committee contributed a lot to de-monopolisation and privatisation, particularly in the areas where it did not interfere with other state policies.

However, the AMC was unable to influence other reforms implemented by the Government, and encourage the adoption of necessary laws by the Parliament. In general, the development of competition policy in Ukraine included the establishment of rules and appropriate procedures, as well as of an institutional framework. At the same time, the competition policy in Ukraine has generally failed to become a core element of the economic policy of the state.

AMC is also charged with improving the competition cultures in Ukraine. Thus, the Committee participates actively in the legislative process and undertakes measures for structural regulation of the economy.

Antitrust authorities can influence market structure by breaking up a monopolistic enterprise, or by allowing or prohibiting a merger. Moreover, in the process of transition, a competition authority can participate in privatisation and de-monopolisation of the economy.

Stockmann (1993) defines five main issues of competition policy in transition. Countries in transition should:

- introduce adequate and practical substantive rules on competition;
- establish appropriate procedures allowing for swift and effective action;
- provide for the institutional framework necessary for the effective implementation of rules and procedures;
- provide the ways and means to ensure that competition aspects are duly taken into account when other government policies are formulated and implemented; and
- explain the market economy and all its elements, including competition, to the public.

It is possible to conclude that Ukraine has been relatively successful in achieving the first three goals, but needs to pay more attention to competition advocacy and education of the public. It is clear that competition policy alone cannot provide sufficient conditions for the rapid growth of an economy. It can assist in building the competitive environment in that economy, and in fact, should do so. Nevertheless, competition policy is just a part of economic policy implemented by the Government, and different policies should be consistent with the other. Ukraine generally lacks in this vital task as compared to more successful transition countries.

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### Suggested Readings

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