

TWINNING PROJECT FICHE

**Strengthening institutional capacities of the Antimonopoly
Committee of Ukraine to conduct market studies and
effectively enforce competition law in accordance with EU
standards**

UA/49

ABBREVIATIONS

AA	EU–Ukraine Association Agreement
AAP	Annual Action Programme (of the EU)
AMCU	Anti-Monopoly Committee of Ukraine
BA	Beneficiary Administration
BC	Beneficiary Country
CIS	Commonwealth of Independent States
DCFTA	Deep and Comprehensive Free Trade Area
EU	European Union
ENPI	European Neighbourhood and Partnership Instrument
GIZ	Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH (Germany)
HR/VP	High Representative of the European Union for Foreign Affairs and Security Policy / Vice-President of the European Commission
ICN	International Competition Network
IT	Information Technology
LAMC	Law of Ukraine “On Antimonopoly Committee of Ukraine” of 26.11.1993 No 3659-XII with further amendments
LPEC	Law of Ukraine “On Protection of Economic Competition” of 11.01.2001 No 2210 -III with further amendments
LPUC	Law of Ukraine “On Protection against Unfair Competition” of 07.06.1996 No 236/96 with further amendments
MFA	Macro-Financial Assistance (an EU funding programme)
MP	Member of Parliament (Verkhovna Rada of Ukraine)
MS	Member State (of the EU)
NCA	National Competition Authority
OECD	Organisation for Economic Co-operation and Development
PCA	Partnership and Cooperation Agreement
PL	Project Leader
PSC	Project Steering Committee
R & D	Research and Development
RTA	Resident Twinning Adviser
SGUA	Support Group for Ukraine
STE	Short Term Expert
SWOT	Strengths Weaknesses Opportunities Threats

<i>TAIEX</i>	Technical Assistance and Information Exchange
<i>TFEU</i>	Treaty on the Functioning of the European Union
<i>ToR</i>	Terms of Reference
<i>UA</i>	Ukraine
<i>UNCTAD</i>	United Nations Conference on Trade And Development
<i>WG</i>	Working Group

1 BASIC INFORMATION

1.1 Programme: ENPI - Framework Programme in support of EU-Ukraine Association Agreements (AAP 2013), CRIS No.024-446

1.2 Twinning Number: UA/49

1.3 Title: Strengthening institutional capacities of the Antimonopoly Committee of Ukraine to conduct market studies and effectively enforce competition law in accordance with EU standards

1.4 Sector: Trade and Industry

1.5 Beneficiary country: Ukraine

2 OBJECTIVES

2.1 Overall objective:

Increased transparency and consistency of the competition policy of Ukraine achieved through further approximation of the national legislation with EU standards, improved law enforcement and competition advocacy on the basis of closer cooperation between the competition authorities of Ukraine and EU Member States.

2.2 Project purposes:

- Further approximation of the national competition legislation with EU standards in compliance with the EU-Ukraine Association Agreement
- Strengthening of the institutional capacity of the Antimonopoly Committee of Ukraine (AMCU) to effectively enforce competition law and to carry out market studies to promote competition in important sectors of the national economy

2.3 Contribution to National Development Plans / Association Agreement / Action plan

The political part of the EU-Ukraine Association Agreement (AA) was signed on 21 March 2014 and the remaining provisions on a Deep and Comprehensive Free Trade Area (DCFTA) were signed on 27 June 2014. However, due to unprecedented political confrontation between Ukraine and Russia, the Ukrainian economy has recently faced the most serious economic downturn since independence. In order to avoid further destabilisation of the economic and political situation and to guarantee Ukraine's access to its traditional CIS market, the EU agreed in September 2014 to postpone the implementation of the DCFTA until January 2016. In addition, in April 2014, the EU established unilateral trade

preferences for Ukrainian exports until November 2014 without awaiting the DCFTA coming into force. In October 2014 the preferential trading regime was extended until 31 December 2015.

The Verkhovna Rada (Parliament) of Ukraine ratified the Association Agreement on 9 September 2014 and by 30 June 2015 the AA had been ratified by 20 EU Member-States.

The Cabinet of Ministers of Ukraine approved an Action Plan for the implementation of the Association Agreement during the period 2014 – 2017¹. According to this Action Plan the AMCU is defined as the main public authority responsible for reforms in Ukraine's competition policy.

Section 1 of Chapter 10, Title IV of the AA specifies AMCU² as the national competition authority of Ukraine responsible for enforcement of the competition law in a transparent, timely and non-discriminatory manner, whilst respecting the principles of procedural fairness and the right of defence.³ Ukraine undertook to maintain and appropriately equip⁴ the national competition authority in order to ensure effective law enforcement within three fundamental components of the competition (antitrust) policy⁵:

- prevention and prohibition of anti-competitive agreements and/or decisions by associations of undertakings and concerted practices that have as an object or effect of impeding, restricting, distorting or substantially lessening competition;
- prevention and prohibition of the abuse by one or more undertaking(s) of the dominant position in the market; and
- control of concentrations of undertakings that may result in monopolisation or substantial restriction of competition.

It is envisaged that within three years of entry into force of the AA, the national laws, regulations and law enforcement practices of the AMCU will be adequately approximated with the relevant *acquis* set out in Council Regulation (EC) No 1/2003 (On implementation of Articles 101 and 102 of the TFEU⁶) of 16 December 2002, Council Regulation (EC) No 139/2004 of 20 January 2004 (Merger Control Regulation) and in Commission Regulations (EU) No 330/2010 (concerning certain categories of vertical agreements and concerted practices) and No 772/2004 (concerning technology transfer agreements).⁷

In the short term, Ukraine has also committed to implement certain changes to competition policy under the Memorandum of Understanding with the European Commission for the Macro-Financial Assistance Programme (MFA - III, signed in 2015). The disbursement of the second tranche of the loan is conditional upon *inter alia* the following indicators of improved competition policy being in place:

- i) reducing the room for discretion by the competition authority in terms of the time allowed for the collection of documents for a merger application;

¹ Cabinet of Ministers' Resolution № 847-p of 17 September 2014

² Article 253(1b), Chapter 10, Title IV of the Association Agreement

³ Article 255(3), Chapter 10, Title IV of the Association Agreement

⁴ Article 255(2), Chapter 10, Title IV of the AA

⁵ Article 254, Chapter 10, Title IV of the AA

⁶ Treaty on the functioning of the EU

⁷ Article 256, Chapter 10, Title IV of the AA

- (ii) raising the thresholds above which notification of mergers is mandatory; and
- (iii) adopting and publishing a document explaining the principles to be used in the setting of any pecuniary sanctions imposed for infringements of competition laws.

3 DESCRIPTION

3.1 Background and justification:

The Government of Ukraine adopted a Strategy for sustainable development of the country “Ukraine - 2020” and a relevant Action Plan⁸ for 2015 (the Cabinet of Ministers Resolution 04.03.2015 № 213-p). In terms of competition policy, the Action Plan follows Ukraine’s obligations under the EU-Ukraine Association Agreement. More specifically, Article 256(1) and (2) of the AA obliges the AMCU to publish its decisions in antitrust law enforcement and in the approval of mergers. Article 255(3) of the AA requires the establishment of adequate transparency of law enforcement activities by the AMCU and, in particular, the publication of a document illustrating the principles used in setting pecuniary sanctions imposed for infringements of completion laws. Similar targets are set in Section 38 of the governmental Action Plan.

According to the governmental Action Plan, the Law of Ukraine “On Protection of Economic Competition” should be amended by 30 November 2015 with necessary provisions on publication of the AMCU decisions and on access of the parties to competition cases and other interested persons to the non-confidential information in possession of the AMCU.

By the same date the Government intends to introduce legislative amendments increasing the value thresholds for notifications of mergers and establishing a legal basis for informal consultations between the AMCU and merging undertakings prior to official notification. These amendments will approximate the current approach to merger control in Ukraine with relevant EU standards, as required by Article 255(6) in Chapter 10 Title IV of the Association Agreement and by the governmental Action Plan.

The national reference for benchmarking competition policy reforms in Ukraine is the Coalition Agreement of the Parliamentary Factions “European Ukraine”⁹. This political statement sets out a number of priorities, including competition policy reform, as follows¹⁰:

⁸ <http://www.amc.gov.ua/amku/control/main/uk/publish/article/110915>

⁹ <http://zakon1.rada.gov.ua/laws/file/text/33/f439014n8.pdf>

¹⁰ Section 2 of Chapter VII “Reforms in the antimonopoly sphere” of the Coalition Agreement.

Reforms in the antimonopoly sphere

- 2.1 To ensure transparency of the AMCU operations through:
- 2.1.1 Introduction of the obligation of the AMCU publish decisions its official website; establishment of a procedure for the use of confidential information; regulation of access to non-confidential version of information submitted during investigations of infringements and in merger cases;
 - 2.1.2 Introduction of legally binding principles for calculation of pecuniary sanctions imposed for infringements of the competition law;
- 2.2 To simplify the merger control regime:
- 2.2.1 Increase of the value thresholds for notification of mergers for the AMCU approval and establishment of the compulsory assessment of impact (absence of impact) of the merger on competition in Ukraine;
 - 2.2.2 Introduction of a simplified procedures for assessment of mergers;
 - 2.2.3 Shortening the scope of information required by the AMCU to assess impact of a merger on competition in Ukraine;
 - 2.2.4 Provision of an obligation to conduct preliminary consultations before official notification of a merger to the AMCU;
 - 2.2.5 Ensuring the possibility of applicants to participate in the AMCU hearings concerning approval of mergers and concerted actions;
 - 2.2.6 Clarification of approaches to assessment of transactions between competitors (horizontal mergers);
- 2.3 To guarantee the rights of parties to competition cases, namely:
- 2.3.1 Setting up deadlines for investigation of infringements by AMCU bodies;
 - 2.3.2 Definition of the adequate scope of rights of persons taking part in the infringement cases by the AMCU;
 - 2.3.3 Regulation of legitimate grounds and the procedure for inspections by the AMCU and procedure for the settlement of disputes related to such inspections;
 - 2.3.4 Regulation of the AMCU competences at various stages of investigation of infringement cases
- 2.4 To establish disciplinary sanctions for public servants whose actions or failure to act caused infringements of competition law in the form of anticompetitive actions (decisions) of public authorities, bodies of local self-governance, administrative and economic managing bodies.

The analysis of the Coalition Agreement, the governmental Strategy and Action Plan for 2015, demonstrates that Ukraine is embarking on a set of economic reforms¹¹. A package of legislative initiatives has been proposed by the Government to de-monopolise, deregulate and liberalise the national economy. In particular, a major restructuring of state owned enterprises and large-scale privatisations are proposed within the ambit of the industrial policy; pro-competitive structures are being promoted in the rail transport sector; public private partnerships and concessions are encouraged to develop motorways and sea-port infrastructure. The agriculture sector is also undergoing reforms through the privatisation of arable land plots and creation of additional incentives for foreign investors. All these reforms, if successful, will impact the national market structures and behaviour of undertakings operating in different sectors.

¹¹ Resolution of the Cabinet of Ministers of Ukraine № 213-p of 04.03.2015

To steer the reforms and the dynamic integration of Ukraine into international markets, the Government needs to be updated with comprehensive information concerning the business environment, existing problems and all issues that affect the market. Very often market data, especially concerning such important sectors as energy, transport, medicines and retail services, are needed for the Government to make regulatory decisions in a rather limited timeframe. It is also important that the economic development and consumer protection policies are clearly understood and supported by the business community, academia, international investors and the public at large.

At the same time, competition policy cannot be successful only through the alignment of the national legislation with international standards. Competition policy requires efficient law enforcement and well-designed competition advocacy¹². In order to facilitate business development and trade, to create a strong competitive environment in Ukraine, the national competition authority should use well balanced and effective law enforcement tools, focusing on the most serious infringements and anti-competitive practices, on the prevention of and remedies for the most distortive structures and inefficiencies in the market. Similarly, the competition authority must be equipped with a comprehensive strategy, adequate resources and experienced staff to ensure successful reforms in a short timeframe. The competition authority should be able to regularly monitor specific markets, interpret economic indicators and to draw appropriate conclusions about causes and effects of the existing inefficiencies, to propose effective remedies that would make markets work better for consumers. The competition law of Ukraine empowers the AMCU to conduct market studies (inquiries) both for the purposes of law enforcement¹³ and competition advocacy¹⁴.

It is also important that outcomes of the market studies are widely published, identifying the existing and potential impediments for competition and possible remedies to prevent negative effects on the economy. However, conclusions about certain anticompetitive features of certain markets, such as dominance of certain undertakings or existence of barriers for entry do not necessarily mean that there are infringements of the competition law. Market studies should be primarily used as an instrument of competition advocacy aimed at bringing the attention of the regulators and business community to the structure and business practices in the relevant market. They are also used to identify possible distortions in the market and to warn economic operators against unfair and anticompetitive behaviour. As an instrument of competition advocacy, market studies can help to better target policy measures, although enforcement actions by the competition authority following certain findings of market studies are not excluded either.

Having acquired a solid experience in the competition law enforcement since the mid-1990s, the AMCU still requires guidance and advice from international practitioners concerning modern practices of law enforcement and competition advocacy tools. The AMCU procedures need to be adjusted to the more demanding international standards of transparency, adequate distribution of the

¹² Article 259 (1), Chapter 10, Title IV of the Association Agreement

¹³ Article 7 (Section 2 Point 11) of the Law "On Antimonopoly Committee of Ukraine"

¹⁴ Article 7 (Section 3 Point 1) of the Law "On Antimonopoly Committee of Ukraine"

burden of proof, procedural fairness and the protection of the legitimate interests of the parties in the law enforcement practice. The competition authority of Ukraine also needs skills to assess competitive situations in complex markets, such as energy and transport, IT and telecommunications, financial services, banking, or cross-market practices by undertakings.

Therefore, one of the Twinning project's main objectives is to assist the AMCU in drafting competition legislation in compliance with EU standards. Other important objectives are to contribute to the creation of internal guidelines, procedures and methodologies to support the AMCU in conducting comprehensive market studies in important sectors, as well as interpreting the collected data and developing remedies and recommendations for policy makers in Ukraine.

It is also foreseen that the Twinning project will support the AMCU in optimising its organisational structure and in developing skills with a training programme tailored to the particular needs of the AMCU. The training programme will comprise workshops, seminars, study visits and internships to the competition authority(ies) of EU Member State(s). Training is especially important at the current stage of the institutional development since the AMCU as a council (consisting of the Chairman and the State Commissioners) and many staff members of the agency have been changed during 2015. The new staff will require considerable knowledge and skills to implement the competition law, that is likely to be substantially amended due to the international obligations of Ukraine under the Association Agreement, to carry out inspections of undertakings, to conduct comprehensive analysis of the market and investigate complex competition cases.¹⁵

The following sections describe the main legislative acts and institutional framework for the implementation of competition policy in Ukraine.

3.1.1 Law of Ukraine “On the Protection of Economic Competition”

According to the OECD Peer Review of Competition Policy and Law of Ukraine of 2008: “Ukraine has a comprehensive and well-developed competition legislation enforced by an authority which has efficient management and good reputation”¹⁶

The UNCTAD Voluntary Peer Review of the Competition Law and Policy of Ukraine in 2013¹⁷ gave the following conclusion:

“88. The comparison of Ukraine’s competition law with international best practices demonstrates that Ukraine’s statutory framework does not require drastic changes. However, much remains to be done in order to create the preconditions for the modernisation of the AMCU into a truly independent and powerful competition authority that would not only punish infringements or control prices, but would also help to establish an effective competitive environment and ensure competition in markets in Ukraine. Thus, it is not so much the competition law that needs reform but rather the enforcement of the law by the AMCU, which needs a stronger direction towards conformity with international best practices.”

¹⁵ Specifically referred to in Article 255 (3, a), Chapter 10, Title IV of the Association Agreement

¹⁶ OECD Peer Review (00 2008 INP 3 P1) N 88923, Paris, 2008

¹⁷ UNCTAD/ /CLP/2013/3 (OVERVIEW)

http://unctad.org/en/PublicationsLibrary/ditccp2013d3_overview_en.pdf

The Law of Ukraine “On the protection of economic competition” of 11 January 2001 (hereinafter - LPEC) contains a standard set of rules contained in most antitrust acts (i.e. prohibition of concerted practices and anticompetitive agreements between undertakings; prohibition of the abuse of a dominant position in the market and merger control). It also contains provisions establishing control over anti-competitive decisions by public authorities, by local self-governments and public administrations.

LPEC is fundamentally aligned with the concepts established in Articles 101 and 102 of the TFEU but it does have certain deviations: for instance, it does not distinguish between horizontal and vertical agreements of undertakings (both categories of agreements are subject to outright prohibition). Similarly, LPEC contains criteria justifying exemption of certain types of restrictive agreements¹⁸ from prohibition, but those criteria are not fully compliant with the criteria established in Article 101(3) of the TFEU. Ukraine still operates a system of prior approval of restrictive agreements between undertakings; in practice, most of the notifications submitted concern the establishment of trade associations.

According to LPEC, infringements of antitrust prohibitions leads to quite severe sanctions¹⁹ of up to 10%²⁰ of the liable undertaking’s global turnover (including the turnover of the whole group of undertakings affiliated with the liable entity through control relationships). Fines are inevitable consequence of practically any infringement of the competition law in Ukraine, although there has been a longstanding criticism on behalf of the business community and practitioners that there is no clear guidance on the principles and methodologies used by the AMCU in setting the amount of fines for infringements of the competition law²¹.

According to LPEC²², concerted actions can be assumed on the basis of the economic analysis performed by the AMCU, if it shows that there are no other objective economic reasons for a parallel behaviour of undertakings in the market, essentially, for price parallelism. The burden of proof in such cases is laid on undertakings²³. The standards of proof, the balance between the rights of economic operators and powers of the competition authority, certain internal procedures and law enforcement instruments applied by the AMCU also require substantial adjustments to comply with the best international practices.

LPEC (sections 5 and 6) also establishes a set of rather standard substantive and procedural requirements for merger control similar to the EU standards. According to LPEC, mergers achieving a certain economic size are subject to prior notification and approval by the competition authority. Mergers that are likely to create a dominant position or to substantially restrict competition in the relevant

¹⁸ In particular, exception for concerted actions of small businesses aimed at the consolidation of purchasing power is provided by Art .7, for vertical agreements on distribution of products by Art. 8, for agreements on intellectual property protection by Art.9 of LPEC.

¹⁹ Article 50(1) of LPEC

²⁰ Article 52 (2) of LPEC

²¹ Article 255(5) of the Association Agreement requires publication of the relevant document by the AMCU

²² Article 6(3) of LPEC

²³ According to UNCTAD Peer Review “This area of enforcement is another instance where AMCU can improve the quality of its competition law enforcement by providing additional secondary guidance about the circumstances in which it considers the prerequisites of Article 6(3) to be satisfied”

market should be prohibited. However, LPEC also provides legitimate grounds for the Government of Ukraine to approve mergers that have been prohibited by the AMCU purely on competition considerations on the basis of a wider public interest.

According to many international observers, the main inadequacies of the current Ukrainian merger control system are the following: i) very low thresholds for notification; ii) inadequate definition of undertakings concerned; iii) a weak nexus between mergers requiring notification in Ukraine and the presence of merging parties in its territory; iv) non-transparent timelines for the completion of merger assessment, especially in Phase II of the merger case assessment; and v) the lack of legal possibilities for undertakings concerned to conduct pre-notification consultations with the competition authority, to discuss and offer remedies prior to the formal notification, if the AMCU has some competition concerns.

The Government of Ukraine has already submitted a legislative initiative to the Verkhovna Rada proposing to establish higher thresholds for notification of mergers and an adequate nexus of the merger transaction with the territory of Ukraine, to introduce a simplified assessment procedure, and to ensure pre-notification consultations between the AMCU and merging undertakings. The draft amendments to the competition law have already passed the first reading stage in the Parliament and these provisions are likely to be adopted as the law of Ukraine by September 2015. Nevertheless, following the said legislative amendments several procedural regulations by the AMCU will require adjustments to comply with EU standards.

LPEC, similar to the *per se* prohibition of horizontal and vertical agreements and concerted practices, does not differentiate between the approach to the assessment of horizontal and vertical concentrations of undertakings. The EU-Ukraine Association Agreement requires the AMCU to adopt and publish a comprehensive document/regulation explaining the principles used in the assessment of horizontal mergers²⁴ and to approximate this regime with provisions of Council Regulation (EC) No 139/2004 of 20.01.2004²⁵

3.1.2 Law of Ukraine “On protection against unfair competition”

The legislation concerning unfair competition practices is primarily aimed at protecting consumers and establishing a fair and pro-competitive environment for doing business in Ukraine. The law “On protection against unfair competition” (hereinafter LPUC) is designed to establish administrative control and provide protection against the illegal use of trademarks, misleading advertising and packaging, unfair hindrance of business through unlawful and unfair business practices. The EU-Ukraine Association Agreement does not contain any specific references to the reform in this segment of the competition policy and in international practice most of settlements and sanctions for such unfair business practices are largely addressed through private enforcement in courts rather than through an administrative interference by the competition authorities.

²⁴ Article 255(5) of EU-Ukraine Association Agreement

²⁵ Article 256(2) of EU Ukraine Association Agreement

3.1.3 Law of Ukraine “On Antimonopoly Committee of Ukraine”

The Law of Ukraine “On Antimonopoly Committee of Ukraine” (hereinafter LAMC)²⁶ of 26 November 1993 defines the AMCU as a public authority with special legal status: it is a council, consisting of the Chair and eight State Commissioners. The AMCU Chairperson is appointed and dismissed by the President of Ukraine after approval by the Parliament (Verkhovna Rada of Ukraine) for a term of seven years²⁷. The AMCU Commissioners (including a First Deputy and a Deputy-Chair) are also appointed by the President of Ukraine for a 7 years term upon nomination by the Prime Minister based on the AMCU Chair’s proposals. The AMCU is supervised by the President of Ukraine and reports to the Verkhovna Rada (the Parliament) in the form of annual reports on AMCU activities.²⁸ The AMCU has special powers in competition law enforcement and in the development of competition policy for Ukraine.

The AMCU competences are prescribed in detail in Article 7 of LAMC as activities dedicated to the following purposes: i) control over compliance of undertakings and bodies of public administration with the competition legislation of Ukraine; ii) prior control of concerted actions (restrictive agreements) by undertakings; iii) merger control; iv) development and implementation of the competition policy of Ukraine; v) competition advocacy and methodological support to the application of competition law.

The AMCU also has other important functions that are only briefly mentioned in the LAMC but prescribed in more detail in special legislative acts. Thus, in public procurement, the AMCU is assigned with the function of the complaint review body. LAMC contains a reference to the Public Procurement Law of Ukraine²⁹ where the competences and procedural aspects of complaint review mechanisms are formulated in detail. Similarly, the recently adopted Law of Ukraine “On State Aid to Undertakings”³⁰ envisages that the AMCU shall act as the national State Aid monitoring authority starting from August 2017 when the said law takes full effect.

The jurisdiction of the AMCU bodies is defined partially by LAMC and by LPEC (especially concerning notification and prior approval of concerted actions and mergers). Thus, according to Article 26(1) of LPEC, mergers are to be notified exclusively to the Antimonopoly Committee of Ukraine and handled by the central office of the AMCU in Kiev. Decisions concerning prohibition of mergers and prohibition of concerted actions subject to legitimate exemption are taken exclusively by the AMCU as a council. Concerted actions may be notified for prior control either to the AMCU central office (in Kiev) or to its regional offices depending on the relevant geographical market to be affected. The AMCU as a collective body may select any competition case under the LPEC and LPUC for review and investigation.

²⁶ <http://zakon1.rada.gov.ua/laws/show/3659-12>

²⁷ Article 9 of the Law of Ukraine “ On Antimonopoly Committee of Ukraine” of 26 November 1993

²⁸ Article 2 of LAMC

²⁹ Article 7(1) point 17-1 of LAMC

³⁰ The law of Ukraine “ On State aid to undertakings” of 1 July 2014 No 1555-VII will be fully enacted in August 2017

An important function within the AMCU in terms of jurisdiction is assigned to the Administrative Boards³¹. These bodies may function on a permanent or temporary basis and consist of at least three State Commissioners and/or at least three managers of the Regional Offices at the level of the regional Administrative Boards.³² AMCU Administrative Boards may conduct market studies; investigate infringements of the competition law; develop recommendations to public authorities concerning anticompetitive acts and decisions; provide recommendations concerning regulatory measures to prevent monopolism and facilitate competition; establish pecuniary sanctions for infringements of competition law and adopt and review decisions in all categories of competition cases within their jurisdiction.

3.1.4 Implementing Regulations of the AMCU

In accordance with the requirements of the competition law and within the powers assigned to it by the competition legislation, the AMCU has adopted a number of implementing regulations:

- AMCU Resolution of 15.08.2012 № 557-p "On standard requirements for concerted actions of undertakings concerning joint research and development/research and design works that may be exempt from the obligation to receive approval of the Antimonopoly Committee of Ukraine" (a block exemption for R&D agreements)
- AMCU Resolution of 19.04.1994 (with further numerous changes) "On procedure for handling complaints and cases of infringements of the competition law"
- AMCU Resolution of 12.02.2002 No 26-p "On procedure for notification of the Antimonopoly Committee of Ukraine for prior approval of concerted actions of undertakings (Concerted Actions Regulation)"
- AMCU Resolution of 19.02.2002 No 33-p "On procedure for notification of the Antimonopoly Committee of Ukraine for prior approval of concentration of undertakings (Concentration Regulation)"
- AMCU Resolution of 12.02.2002 No 27-p "On standard requirements for concerted activities that entitle to a general exemption from the obligation to receive prior approval of the Antimonopoly Committee of Ukraine for concerted actions of undertakings" (General Block Exemption Regulation)
- AMCU Resolution of 11.12.2008 No 880-p "On standard requirements for concerted actions of undertakings concerning specialisation of production activities that may be performed without prior approval of the Antimonopoly Committee of Ukraine" (Block Exemption for Specialised Production Agreements)
- AMCU Resolution of 30.11.2006 No 511-p "On standard requirements for establishment of an economic association that may exempt its creation from the obligation to receive prior approval of the Antimonopoly Committee of Ukraine" (Block Exemption for Associations)

³¹ Article 14 of LAMC

³² Administrative Boards are regulated by Article 12-1 of LAMC

- AMCU Resolution of 05.03.2002 No 49-p “On Methodology for assessment of monopolistic (dominant) position of undertakings in the market”
- AMCU Resolution of 25.12.2001 No 182-p “On procedure for inspecting compliance with the legislation on protection of economic competition”

At present, AMCU activities are allocated between the following categories of infringement cases: a large part of its resources (about 40%) is dedicated to the investigation of abuse of dominance cases; anticompetitive decisions by public authorities and administrative bodies account for more than 30% of all cases handled by the AMCU whereas Anticompetitive agreements and concerted practices amount to less than 10% of all infringement cases investigated by the AMCU.

3.2 Linked activities (other international and national initiatives):

The Twinning project will take into account outputs and recommendations from the previous EU-funded technical assistance and Twinning projects, as well as other international initiatives taking place in the sector of competition policy during the project implementation period.

The most recent EU technical assistance project in the area of antitrust policy and law (“Harmonisation of Competition and Public Procurement Systems in Ukraine with EU standards”) was implemented between 2009 - 2012 by an international consortium led by GIZ International Services (Germany) and it was aimed at competition policy development and the improvement of the national competition legislation in accordance with the requirements of the Partnership and Cooperation Agreement (PCA). In particular, the law enforcement component of the project assisted the AMCU with the introduction of a leniency programme; it drafted the relevant regulatory framework and provided recommendations for setting pecuniary sanctions for infringements of competition law. In the institutional development component, the project improved the IT and communication capacities of the AMCU. In particular, it assisted in upgrading the AMCU website, which included an IT solution for publications and for searching for particular decisions in the data-base. The project also assisted with a number of competition advocacy activities. A commentary was provided on the merger control system and AMCU brochures were published with the assistance of the EU-funded Project. A comprehensive training programme (in particular, an internet based training manual for the AMCU network) was developed; a number of seminars and international conferences on competition policy were organised with the participation of prominent EU competition experts, representatives of the business community and legal professionals.

The previous Twinning Project financed by the EU: “Strengthening the enforcement of competition law and policy in Ukraine” was implemented between 2007 and 2009 jointly by the French, Hungarian and Lithuanian competition authorities. The project performed a legal gap analysis for the main legislative and regulatory acts of Ukraine based on a comparison with the relevant competition rules of the EU. The project experts also actively supported the AMCU in drafting regulations and guidelines for block exemptions (in particular, concerning “technology transfer” agreements and car distribution agreements); a manual on the implementation of dawn raids and supported the AMCU in investigations of

cartels, with a number of practical workshops. An internship programme was also organised by the French competition authority for several AMCU staff.

Between 2004 and 2007 another EU-funded project: “Legal and institutional framework for competition in Ukraine” was implemented by a consortium led by “IRZ GmbH” (Germany). The project focused on legislative development (several amendments to the LPEC and AMCU regulations were introduced in 2005 with assistance from project experts). The Project’s training programme included AMCU staff and the Ukrainian judiciary and it was mainly focussed on the transfer of knowledge about the recent reform of the EU competition law (2004) and the development of investigatory skills for AMCU staff. A large amount of project resources was dedicated to the development of the IT network of the AMCU offices. IT hardware was procured for the AMCU network and software was developed (e.g. a data base for control relationships between undertakings). In addition, the project published a comprehensive commentary to the LPEC, based on its comparison with EU competition rules and this commentary was distributed throughout the AMCU network.

A certain scope of assistance to the development of antitrust policy and law is being provided by the EU Support Group for Ukraine (SGUA). The Support Group coordinates the resources and expertise of the Commission’s services in view of supporting Ukraine’s reform programmes and the implementation of the EU-Ukraine Association Agreement, including the organisation of the approximation of Ukrainian legislation with that of the EU. It provides a focal point, structure, overview and guidance to the Commission’s work in this respect, helps to mobilise Member States expertise and further enhance coordination with other donors and the International Financial Institutions. The Support Group works in close cooperation with all relevant DGs, the European External Action Service and the EU Delegation in Kyiv as well as with Member States, while maintaining appropriate relations with Ukrainian authorities. It reports to the President and the HR/VR under the guidance of the Commissioner for European Neighbourhood Policy and Enlargement Negotiations.

The SGUA is providing high-level advice by involving experienced Member State experts to support the transposition, implementation or enforcement of specific provisions of EU competition legislation, particularly concerning:

- Merger control;
- The principles to be used in the setting of sanctions imposed for infringements of competition laws;
- Instructions to carry out dawn raids;
- The development of market competition (e.g. National Competition Development Programme);
- Training in enforcement practices.

For this purpose the SGUA may use the Technical Assistance and Information Exchange (TAIEX) instrument of the European Commission. TAIEX is largely a needs-driven facility to deliver appropriate tailor-made expertise at short notice in three ways: a) workshops on specific areas of EU legislation with the participation of a large number of beneficiary officials; b) expert missions and c) study visits for three practitioners from a beneficiary administration to an EU Member State’s

administration.

3.3 Results:

The currently proposed Twinning Project will aim to achieve progress in two main inter-related directions:

- 1) approximation of competition legislation and of implementing regulations to EU standards, including investigatory and notification procedures, methodologies and guidelines for the implementation of the revised competition legislation.
- 2) institutional development of the AMCU through close interaction between the Ukrainian and EU competition agencies. This will be achieved by training AMCU staff on a number of specific law enforcement issues, as well as by providing assistance for the institutional reorganisation of the AMCU and for preparation, organisation and implementation of comprehensive market studies.

The AMCU staff from its central and regional offices will enhance their knowledge of EU competition policy and law, of the regulatory framework used by the European Commission and NCAs of EU Member States. The AMCU staff will gain a better understanding of the milestone competition cases decided by EU courts; their skills in defining relevant markets and in the assessment of horizontal mergers will improve. The new AMCU commissioners, middle-level management and other categories of the AMC staff will be assisted in building up competition cases, handling of complaints and other information, especially the commercially sensitive information, and in the application of various investigatory techniques.

The Twinning project will ensure the achievement of the following mandatory results:

- Result 1:** Ukraine successfully meets obligations under Title IV Chapter 10 “Competition”, Section 1 “Antitrust and Mergers”, Articles 253-256 of the EU-Ukraine Association Agreement and approximates the national competition law and implementing regulations to the relevant EU rules and standards
- Result 2:** The merger control regime is aligned with EU standards established by EU Merger Regulation (EC) 139/2004, as envisaged in Title IV, Chapter 10, Articles 255(6) and 256(2) of the EU–Ukraine Association Agreement
- Result 3:** Legal certainty and fairness of the law enforcement procedures applied by the AMCU will be improved to meet the requirements of Council Regulation (EC) 1/2003 of 20 December 2002
- Result 4:** The competition advocacy function is improved: relevant methodology is developed, the AMCU institutional adjustments required to conduct comprehensive market studies are made, and market studies in selected sectors of the national economy are published.
- Result 5:** The AMCU institutional structure and capacities improved to meet challenges of the competition policy reforms. The AMCU organisation is refocused on the most serious infringements of the competition law, control of horizontal mergers that substantially restrict competition and on comprehensive market studies (analysis).

3.4 Activities

The Twinning partners (BC and MS Administrations) should clearly define project activities during the (maximum) 5 months available for the preparation of the Twinning contract, including the associated work plan. Before project activities can begin, both project partners must prepare and agree a detailed work-plan, which must fix clear benchmarks to allow for close monitoring of project progress towards the final result. The work-plan, together with corresponding budget, will become an integral part of the Twinning contract.

A kick-off and a project closure meeting should be included in the work plan. These two events are meant to draw the attention of all pertinent stakeholders, as well as the media, to the project and they should ideally be attended by high-ranking officials.

The kick off meeting will be organised to introduce the Project team and to acquaint the Ukrainian Government and all key stakeholders in the competition policy sector, as well as the public at large, with the objectives and activities planned for the Project.

At the end of the project implementation phase, a closing Conference will be organised to present the results achieved by the Twinning partners and to share experiences and views on further challenges standing before the AMCU and the national competition policy of Ukraine in general.

3.4.1 Activities related to Result 1 (Component 1): “Approximation of competition law and regulations to EU standards”

Any effective competition policy should be based on a comprehensive and clear legislation aligned with the best international standards and well understood by businesses, regulators, the judiciary and consumers, whose interests ultimately should be of primary concern to the legislators and law enforcement agencies. Ukraine has committed to align its competition law with the EU competition rules, and specific commitments of Ukraine in the antitrust sphere are envisaged in Articles 255 and 256, Section 1 of Chapter 10, Title IV of the EU-Ukraine Association Agreement.

The Twinning project experts will contribute to the approximation of the Ukrainian competition legislation with relevant EU rules through legal drafting, as well as through the provision of advisory notes and recommendations concerning both material and procedural provisions to address the following issues:

- Exemption of restrictive agreements from the prohibition of concerted actions and alignment of the criteria established in Articles 7-10 of LPEC with the relevant criteria of Article 101(3) of the TFEU;
- Approximation of the national system of prior approval of concerted actions with the general approach to control of restrictive agreements and concerted practices established under the Council Regulation (EC) No 1/2003 of 16 December 2002;
- Approximation of the legislative requirements for prior notification and assessment of horizontal mergers in accordance with Council Regulation

(EC) 139/2004 of 20 January 2004; revision of relevant procedures for notification of mergers, in particular, i) introduction of the pre-notification informal consultations of merging undertakings with the AMCU; ii) introduction of a simplified procedure for approval of certain categories of concentrations of undertakings; iii) establishing legal certainty concerning the scope of information required for notification mergers; and iv) the discretion of the competition authority to extend the deadlines for the adoption of decisions concerning mergers.

The project experts will be also assisting the AMCU in drafting the following regulations:

- Regulation of vertical agreements and concerted practices in accordance with the requirements established in Article 101(3) of the TFEU and Commission Regulation (EU) No 330/2010 of 20 April 2010, specifically concerning provisions of Articles 1- 4, 5 – 8 thereof;
- Block exemption of certain categories of technology transfer agreements from prohibition in accordance with the requirements of Article 101(3) of the TFEU and Commission Regulation (EU) No 316/2014 of 21 March 2014

In order to assist the AMCU in its work on the approximation of the competition legislation to the relevant *acquis communautaire*, the RTA experts will participate, if required, on an *ad hoc* basis to support the AMCU during inter-ministerial and parliamentary consultations. Such support will be necessary in the current Ukrainian context to ensure that the AMCU initiative for draft legislation and recommendations for policy makers (developed in cooperation with the Twinning experts) would be sufficiently understood by various stakeholders, such as MPs, Ministries, competition lawyers, other public and civil society organisations involved in the reform of the competition policy and law in Ukraine.

3.4.2 Activities related to Result 2 (Component 2): “Alignment of Merger Control Regime with EU Standards”

The Twinning project will contribute to the development of the national merger control regime and its alignment with the standards established by Council Regulation (EC) No 139/2004 of 20 January 2004, in particular, by the following activities:

- Revision of the existing AMCU procedure for the notification of mergers.
- Preparation of a concept paper with recommendations on the draft AMCU Regulation (Guidelines) for the assessment of horizontal mergers, or support the drafting of a new guideline (regulation) for the assessment of horizontal mergers.
- Support the preparation of the methodology for assessment of horizontal mergers and application of the test on substantial impediment of effective competition and other standard methods for the assessment of horizontal mergers
- Providing recommendations and advice for the implementation of pre-notification consultations between merging undertakings and the AMCU

- Preparation of a concept paper with recommendations for the AMCU guidelines (regulations) on the simplified procedure for prior approval of certain categories of concentrations of undertakings in accordance with Commission Notice 2013/C No 336/04.
- Providing advice on the scope of necessary information and the competition authority's discretion to extend the deadlines of final decisions on notified mergers
- Preparation of recommendations for the revision of the AMCU guidelines (methodology) for the definition and delineation of relevant markets in compliance with the relevant EU standards for the assessment of horizontal mergers (this topic is also relevant to the AMCU investigations in abuse of dominance cases)

The Twinning activities will be focused on the improvement of the regulatory and methodological framework for the assessment of horizontal mergers, on the development of professional skills of AMCU staff in defining relevant markets and the analysis of market structures³³.

Training activities

The Twinning project's training programme will support the development of the national procedures for merger control and include at least the following activities:

- A workshop dedicated to the simplified procedures in the EU and the national jurisdictions of the EU Member State(s) for the notification of mergers and a shortened form of authorisation for certain categories of mergers that do not raise serious competition concerns.
- Two workshops dedicated to the following: 1) the application of standard tests for the assessment of horizontal mergers, especially, the test on substantial impediment of effective competition, and 2) procedural aspects and substantive requirements for acceptance of commitments by merging undertakings at various stages of a merger appraisal.
- A workshop dedicated to the process of pre-notification consultations between undertakings and the competition authority, the scope of relevant information required for notification, as well as requirements for handling of information received from undertakings at the pre-notification stage.
- A seminar dedicated to the definition and delineation of relevant markets based on product substitutability, geographical and temporal dimensions of the market (with case law and examples of complex and dynamically developing markets such as media, retail services, energy and environment, pharmaceuticals, financial services, transport, etc.)

3.4.3 Activities related to Result 3 (Component 3): "Improvement of competition law enforcement by AMCU"

The Twinning Project will contribute to the alignment of the Ukrainian law enforcement practices with requirements of Council Regulation (EC) 1/2003 of 20 December 2002. In particular, the project activities will be targeted at the

³³ Title IV, Chapter 10, Article 256 (2) of the AA

improvement of the AMCU internal procedures, transparency and the fairness of AMCU law enforcement practices.

The Twinning project will review and consider modifications required for the existing system of prior approval of concerted actions and advise on bringing it into compliance with the requirements of Council Regulation (EC) 1/2003. In particular, there is a need to approximate the criteria for the exemption of restrictive agreements and concerted practices in LPEC with the relevant criteria in Article 101(3) of the TFEU. Particular rules are also needed to regulate vertical agreements and concerted practices as a separate category of restrictive agreements. The Twinning project will contribute to the drafting and introduction of a new block exemption for categories of technology transfer agreements.

In order to ensure the sufficient level of approximation of the AMCU law enforcement practices with EU standards; sufficient transparency of the AMCU decisions; adequate processing of information obtained during investigations, reviewing of complaints and hearings in competition cases, to ensure the rights of parties to the competition cases as required by Council Regulation (EC) 1/2003, the Twinning project will deliver the following activities:

- The preparation of a comprehensive gap analysis of the regulatory and institutional framework for prior approval of concerted actions in Ukraine in comparison with the EU system of control of restrictive agreements and concerted practices according to Council Regulation (EC) 1/2003;
- The preparation of a concept paper with recommendations to the AMCU regarding the settlement of competition concerns identified during investigations (or in the existing context during the assessment of notified restrictive agreements) through acceptance of commitments by undertakings;
- An analysis of the existing legal framework and AMCU procedures for handling complaints; for processing information during investigations and inspections (dawn raids); for access to the AMCU file; and providing recommendations for a revision of the AMCU procedures non-compliant with the requirements of Council Regulation (EC) 1/2003.
- An analysis of the structure and comprehensiveness of the AMCU decisions in antitrust cases and the provision of clear recommendations for improving the format and content of the decisions and statements by the AMCU, with a particular focus on the protection of commercially sensitive and confidential information.

Training activities

The AMCU law enforcement practices, in aligning with EU standards, will be supported by the following training activities:

- A workshop dedicated to the principles and to the necessary regulatory framework applied in the EU for the acceptance of commitments by undertakings, as a tool for the resolution of competition concerns on a cooperative and preventive basis;
- A study visit to the NCA of an EU Member State (MS) for the AMCU case handlers with the purpose of gaining expertise from MS Competition

Authority staff in procedures for handling complaints, confidential and commercially sensitive information, the organisation of case hearings and the requirements for the protection of the rights of parties, complainants and other persons involved in competition cases.

- A workshop will be organised for the AMCU with the purpose to improve the structure and comprehensiveness of AMCU decisions³⁴, recommendations and statements, in compliance with the best international standards on the publication of decisions (and other information) by the competition authority.

3.4.4 Activities related to Result 4 (Component 4): “Market studies in selected sectors and strengthening of competition advocacy”

The Twinning project will contribute to the organisation and implementation of market studies by the AMCU in selected sectors of the national economy where the Ukrainian Government is embarking on reforms. In particular, the Twinning project will support the development of market studies as an instrument of competition advocacy through the following activities:

- To support the drafting of AMCU guidelines on market studies (procedures, organisation, structure of the study, analysis of market characteristics, relevant market definition, remedial actions, etc.) and the dissemination and implementation of their results
- To Support the drafting of Terms of Reference (ToR) for three market studies to be undertaken by the AMCU in particular sectors; assistance with the organisation of the team work and with the assessment of collected evidence; support with the analysis of remedial actions and advice on the publication of the market inquiry conclusions (reports)

Training activities

The market studies in the selected sectors will be supported by the following training activities within the Twinning project:

- An introductory seminar on the role of market studies as part of an effective competition policy; procedural requirements; the structure of market studies; the organisation of the team; the collection of evidence; methodologies for the analysis and interpretation of the market data and advice on remedial actions.
- A study visit to the NCA of an EU Member State to gain knowledge on the practical aspects of the implementation of comprehensive market studies (investigations) and how to use the results of market studies (inquiries) for the promotion of competition and the development of the regulatory framework.

³⁴ With relevance to Title IV, Chapter 10, Article 256 (1-2) of the AA

3.4.5 Activities related to Result 5 (Component 5): “Strengthening institutional capacity of the AMCU to implement reforms in competition policy”.

The Twinning project will contribute to the institutional restructuring of the AMCU to ensure that antitrust functions are performed effectively (notifications, inspections, investigation and prosecution of infringements of the competition law) and, at the same time, new functions envisaged under the revised legislation (such as pre-notification consultations with merging undertakings or conducting of comprehensive market studies) are adequately supported by the AMCU organisational structure. For this purpose, the Twinning project will assist the AMCU with the following activities:

- An analysis (e.g. SWOT analysis) of the current institutional capacities of the AMCU will be prepared in the context of traditional antitrust and merger control functions, as well as the competition advocacy function; recommendations will be provided for the reorganisation and reallocation of the AMCU resources to ensure effective performance of inspections and investigations, effective merger control and competition advocacy functions (comprehensive market studies, publication and improvement of the contents of the AMCU decisions etc.);
- Interviews will be conducted, or questionnaires disseminated, with AMCU management, staff, representatives of the business community, law firms, the judiciary and other public authorities involved in competition cases in Ukraine in order to identify possible inefficiencies and any lack of capacity in the current AMCU organisational structure. A report with recommendations will be prepared for the AMCU concerning the results of these interviews or feedback provided via questionnaires
- An advisory note will be prepared on best practice procedures and safeguards for the proper handling of various categories of information by competition authorities (especially confidential information, information submitted by complainants, merger notifications, formal and informal statements by undertakings, applications for leniency, evidence obtained during inspections and dawn raids, answers to official inquiries, and other categories of information). This advisory note will also highlight the importance of having effective and adequately resourced institutional structures to perform these functions efficiently.

Training activities

The institutional capacities and reorganisation of the AMCU structure will be aimed at improving antitrust enforcement, having more targeted merger control and comprehensive market studies. These outcomes will be achieved through the following activities:

- A study visit of 5 AMCU managers to the MS NCA to learn about: organisational structures; the interaction of different units the scope for outsourcing and the interaction of the NCA with the European Commission, sector regulators, Parliament, Ministries, and the judiciary in the EU Member State.

3.5 Means/Input from the MS Partner Institution

3.5.1 Profile and tasks of the Project Leader

Roles and tasks

The Twinning project will be implemented under the supervision of two Project Leaders (PLs) acting as counterparts and representing their respective competition authorities of the EU Member State and Ukraine.

The Member State Project Leader (MS PL) is expected to be a senior civil servant from MS-partner administration. He/she should be a high-ranking official. MS PL should direct, coordinate and control overall progress of the Twinning Project. He/she is expected to ensure the achievement of the mandatory results of the project. In particular, the MS Project Leader will be responsible for the following tasks:

- Conceive, supervise, coordinate and monitor the overall thrust of the project;
- Plan project activities together with the BC project leader and ensure MS experts' availability to work in the project;
- Maintain communication with the AMCU and with the EU Delegation to Ukraine;
- Ensure backstopping and financial management for the project;
- Co-chair the Project Steering Committee meetings with the Beneficiary Country Project Leader (BC PL);
- Submit interim quarterly and final project reports to the PSC and to the EU Delegation to Ukraine.

He/she will continue to work at his/her senior position at the MS partner administration but is expected to devote at least three working days per month to carry out on-site missions to Ukraine and to attend the Project Steering Committee (PSC) meetings to be held at least once every three months.

The Beneficiary Country Project Leader (BC PL), being a senior official of the AMCU, will act as the MS Project Leader's counterpart. He/she is expected to coordinate and to provide support to the project concerning all political, organisational, logistical and technical matters in the Ukrainian territory. The BC PL will co-chair and coordinate the Steering Committee meetings on behalf of the AMCU.

The senior official status of the Project Leaders should ensure their ability to mobilize the necessary staff and resources (including logistics) to ensure the efficient and smooth implementation of the Twinning project.

MS Project Leader Profile

Qualifications and skills:

- University Degree, preferably in Law or Economics;
- Fluent in written and spoken English;

General Professional experience

- At least 10 years of professional experience in the field of competition policy and law;
- Experience in project management;

Specific professional experience

- 5 years of experience in enforcement of the competition law, in investigation of concerted actions and merger control;
- Excellent knowledge of EU competition law and the EU Internal Market *acquis*;
- Profound knowledge of organisation, functions and management structures of an agency implementing EU competition rules;

3.5.2 Profile and tasks of the Resident Twinning Adviser (RTA)

Role and Tasks

The RTA will be responsible for the day-to-day management and implementation of the project. He/she will be seconded to Ukraine for the period of 32 months (the project's implementation period) and based at the AMCU Head Office in Kyiv.

The RTA will perform the following tasks:

- Organise and supervise day-to-day implementation of the Twinning project in Ukraine .
- Provide technical advice and assist the AMCU in accordance with the predetermined work-plan.
- Participate in working groups coordinated by the AMCU to draft legislation and/or implementing regulations required for the approximation of antitrust investigations and merger control functions to EU standards;
- Establish and maintain relations with the Ukrainian governmental public and private institutions involved in the development of competition policy in Ukraine (Ministries, market regulators, academic and educational institutions, civil society organisations dealing with competition policy, the judiciary, the legal profession and business associations)

- Organise and participate as a panellist /a presenter/ a moderator/ a chairperson in the training events organised during the implementation of the Twinning project;
- Organise study visits for AMCU staff to the competition authority (ies) of EU Member State(s);

Profile of RTA

Qualifications and skills:

- University degree in law or in economics;
- Excellent English language skills, both written and spoken;
- Good Command of Ukrainian/ Russian will be an advantage;
- Full computer literacy with significant knowledge of MS Word, Excel and Power Point;
- Excellent interpersonal skills, strong team-working skills.

General professional experience

- At least 10 years of professional experience in public service;
- Excellent knowledge of the EU competition legislation the EU Internal Market *acquis*;
- Experience in Project Management;
- Previous experience in Twinning Operations or in EU-funded technical assistance projects would be an advantage.

Specific professional experience

- At least 5 years of experience in the implementation of EU and national competition rules of an EU Member State (antitrust and/or merger control rules).
- Experience in drafting legislation/regulations on national competition rules will be considered an asset;
- Experience (practical exposure) in building the institutional capacity of a national competition authority would be an advantage.

The RTA may have one or two assistants (RTA Assistant and Language Assistant) depending on the proposed project's implementation strategy. The assistant(s) will be recruited and funded by the project. The profile of the assistant(s) will be specified by the RTA and agreed with the Sector Manager from the EU Delegation following the provisions of the Common Twinning Manual (revision 2012, update 2013-2014).

3.5.3 Profile and tasks of the MS short-term experts (STEs)

Roles and Tasks

The project activities would require the mobilisation of at least 10 (indicative) different short-term experts (STEs) (with specific types of expertise) from the MS partner competition agency(ies) in order to complement the technical

qualifications and skills of the RTA. The short term experts are expected to be seconded from the MS administration or approved mandated body(ies).

Short-term experts are expected to perform the following tasks:

- 1) draft legislative provisions, implementing regulations, AMCU guidelines, prepare methodologies, advisory notes, analytical papers and recommendations to the AMCU and to other stakeholders involved in the approximation of the national legislation with relevant EU *acquis*;
- 2) participate in the planning, organisation and practical implementation of the market studies (inquiries and analysis of collected market data) conducted by the AMCU;
- 3) act as panellists and make presentations in the seminars, workshops and in training event on anti-trust issues, on principles and standards for assessment of horizontal mergers, on compliance with the EU competition rules;
- 4) provide practical advice on the institutional restructuring and efficient allocation of the competition authority's resources to meet challenges of the reform of the competition policy and law in Ukraine in compliance with the relevant requirements of the DCFTA/Association Agreement between EU and Ukraine.

Profiles of Twinning Project STEs

Qualifications and skills of STEs

- University Degree (preferably in economics or law);
- Good knowledge of English and writing skills;
- Good interpersonal and communication skills;
- Training skills / experience in making professional presentations in conferences, seminars, workshops

General professional experience

Civil servant of MS administration or member of staff of approved Mandated Body

- Good knowledge of EU competition policy and the EU Internal Market *acquis*;
- Strong analytical skills and team –working skills.

Specific professional experiences of Twinning STEs

<i>STE Profile</i>	<i>Specific Experiences and Professional Skills</i>
1. STEs in legislative approximation and competition	<ul style="list-style-type: none"> - At least 10 years of professional experience in the development of the national/ or EU competition policy and law. - Participation in the European Commission's

policy advice	<p>meetings on the development of competition policy and law, in OECD and ICN working Groups on regulation and the development of best practices for enforcement of specific antitrust issues or competition advocacy tools will be an asset;</p> <ul style="list-style-type: none"> - Excellent legal drafting skills and profound knowledge of EU competition rules; - Experience in the implementation of technical assistance projects or in Twinning Operations will be an advantage - Command of Russian or Ukrainian would be an advantage;
2. STEs in Market Analysis (Market studies)	<ul style="list-style-type: none"> - At least 10 years of experience in competition or industrial policy development; - Profound knowledge of modern business practices and analytical skills in particular sectors/ markets - Managerial experience; - Excellent writing skills and experience in preparing comprehensive reports/recommendations on industrial policy/ competition/ or regulatory issues
3. STEs in Merger Control	<ul style="list-style-type: none"> - At least 10 years of experience in competition policy and law enforcement; - Excellent knowledge of Council Regulation (EC) No 139/2004 of 20 January 2004 and Implementing Regulation No 802/2004 of April 7 2004 - Experience in assessment of merger cases;
4. STE in antitrust law enforcement	<ul style="list-style-type: none"> - At least 5 years of professional experience in handling antitrust cases, in particular, experience in investigation of cartels and abuses of dominance - Excellent knowledge of substantive and procedural requirements of EU Council Regulation (EC) No 1/2003 of 16 December 2002 - Good knowledge of EU antitrust case law; - Experience in drafting competition authorities statements of objections, decisions in antitrust cases
5. STE in Institutional and Human Resource Development	<ul style="list-style-type: none"> - At least 5 years of professional experience in senior managerial position in MS competition authority or in DG competition; - Experience in policy advice activities within previous Twinning or Technical assistance projects would be an asset; - Participation in international working groups, task forces or

	policy development activities within international organisations and networks of competition authorities (UNCTAD, OECD, ICN) would be an advantage;
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4 INSTITUTIONAL FRAMEWORK

4.1 Project beneficiary - Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine was established in 1993 after the adoption of the Law "On the Antimonopoly Committee of Ukraine". Between 1994 and 1996 a network of 27 regional offices was set up in all regions of Ukraine and in the cities of Kiev and Sebastopol. In the 1990s the country's strategic objective was to complete the de-monopolisation of the post-Soviet economy and undertake a large-scale privatisation programme. The main challenge for the competition authority was to prevent the transformation of the state monopolies into private ones and to detect numerous abuses of market power by monopolists. Gradually, the legal framework for competition in Ukraine and the role of the AMCU has changed. Today, the Ukrainian Constitution³⁵ guarantees protection of competition and prohibits the abuse of monopolistic power in the market, unlawful restrictions on competition and unfair competition. The principal instrument of competition policy is the law of Ukraine "On the Protection of Economic Competition" adopted on 11 January 2001 and enacted in 2002.

After 22 years of operation, the AMCU has gained significant experience in: the detection of anti-competitive behaviour, the investigation of infringements of competition law, control of concentrations between undertakings and in the control of anticompetitive decisions by public authorities and bodies of administrative power. The competition authority plays a central role in the formation of national competition policy and in the maintenance of a pro-competition environment in all sectors of the economy. It also has a very significant influence on price regulation in Ukraine, especially in the utilities sector. The AMCU decisions are now well respected by business operators, public administrations and by the public at large.

At the end of 2014, the AMCU had a staff of 649 persons³⁶ including employees at 26 regional offices and the central headquarters in Kiev (the central office employs about 240 persons). The AMCU Chair appoints all staff including those in regional offices but has no power to allocate employees between the central and regional offices.

The new AMCU Chairman (Mr Yuriy Terentiev) was appointed to the position in May 2015. On 29 June 2015, six new AMCU State Commissioners (Ms. Anna Artemenko, Mr. V. Plukhovych, Mr. N. Sidorenko, Ms. Svitlana Panayotidi, Ms Maria Nizhnik and Ms M Protsyshen) were appointed by the President of Ukraine. Although particular responsibilities of the AMCU Commissioners are still to be defined in the nearest future, the competition authority of Ukraine is able to perform its functions according to the requirements of the law.

³⁵ Article 42 of the Constitution of Ukraine (1996)

³⁶ AMCU Annual Report for 2014

The AMCU organisational structure (Annex 3) today comprises 5 analytical and market investigation departments:

- Department for transport and utilities (“First Department”);
- Department for oil, fuels, gas and electricity (“Second Department”)
- Department for agribusiness, food and industrial markets (“Third Department”)
- Department for financial and other non-industrial products (“Fourth Department”)

Department for telecommunications, retail and health services (“Fifth Department”)

There are also two special investigatory departments:

- Department for investigation of cartels and abuses of dominance (excluding bid-rigging cases) (“Sixth Department”), and,
- Department for investigation of unfair competition (“Seventh Department”)

In addition there are three Directorates dealing with cross-cutting issues:

- Legal Support Directorate ensures the legality of decisions adopted by AMCU bodies; it follows up possible judicial review of the decisions and represents the AMCU in court; it also supports the legal drafting function and provides guidance to other AMCU departments concerning various legal aspects of competition law enforcement.
- Organisation and Personnel Directorate performs standard administrative functions, such as human resource development and it also maintains Telecommunication and IT services. There is also a Press and Public Relations Unit; a Finance and Accounting Unit and the Unit for interaction of regional offices.
- Competition Policy Directorate provides methodological support to all other AMCU departments and is involved in competition advocacy, interacting on behalf of the AMCU with other public authorities, regulators and various public organisations. There is also the International Relations Unit, which plans work within international structures and coordinates relevant technical assistance and Twinning projects for the AMCU.

Two other Directorates have the following functions:

- The Directorate for Prior Control of Concentrations and Concerted Actions deals with all prior notifications of restrictive agreements and mergers regardless of the economic sector;
- Directorate for Complaint Review in Public Procurement procedures (which also includes a special unit for the detection and investigation of bid-rigging).

All AMCU staff have higher education degrees, mainly in law or economics. The AMCU network of territorial offices and the central office are fully equipped with computers and servers, which allows the competition authority not only to maintain electronic correspondence between all members of staff and process electronic documents but also to hold video-conferences. The AMCU also

maintains specialised databases that are used for analytical and law enforcement purposes. The AMCU official web site (www.amc.gov.ua) is fully functional and it integrates the web sites of all 26 regional offices.

According to the publically available information, confirmed by AMCU management, the budget allocation for the AMCU was substantially reduced in 2014 - 2015, despite the fact that its mandate had been enhanced under the scope of Public Procurement Law and the State Aid Law. The OECD (2008) and UNCTAD (2013) Peer Reviews of Competition Policy and Law of Ukraine, both put forward recommendations for the Government of Ukraine to ensure the availability of adequate material resources for the AMCU, regarded as crucial for the effective implementation of competition policy and for law enforcement in compliance with international standards. Due to the fact that the Ukrainian competition law established a requirement for notification of almost all cooperation agreements between undertakings and very low value thresholds for merger notifications, low standards of proof to presume cartel activities and collusion, the workload of the AMCU in antitrust and merger control cases (plus other responsibilities in public procurement and State Aid) is increasing all the time.

Sufficient resources and an efficient institutional structure are absolutely essential for the AMCU to perform the necessary economic analyses within cases concerning abuse of dominance, cartels, mergers, State Aid and public procurement, as well as market studies. The latter function is indispensable for an effective and modern competition policy, for quality regulatory work and useful for supporting law enforcement activities. The AMCU needs reorganisation and a reallocation of resources and staff need training so that they have the practical skills necessary to detect, investigate and interpret market characteristics. The analytical activities and regulatory efforts of the AMCU should complement its law enforcement functions.

Currently, the AMCU analytical capacities are supported by a specialised budgetary institution affiliated with the AMCU: the Centre for Competition Policy. This institution employs 20 research staff. The main task of this organisation is to prepare analytical materials, reports and recommendations to the AMCU concerning specific economic sectors and proposed regulatory instruments. Typically, the research is focused on complex sectors such as energy, transport, telecommunications and other utilities. The AMCU uses the Centre's output to support its position on competition policy in particular sectors. The AMCU annually approves plans for the Centre's activities.

There is an advisory Civil Society Council under the AMCU whose purpose is to monitor the implementation of competition policy by the AMCU, organise effective interaction between the AMCU, the business community and the general public and to receive feedback from economic operators and consumers concerning regulatory initiatives proposed by the AMCU. This body facilitates consultations between the AMCU and civil society on various aspects of competition policy. The AMCU is obliged to take into consideration recommendations made by the Civil Society Council.

5 BUDGET

The total maximum budget for this project is 1,800,000 EUR.

6 IMPLEMENTATION ARRANGEMENTS

6.1 Implementing Agency responsible for tendering, contracting and accounting

The Delegation of the European Union to Ukraine will be responsible for tendering, contracting, payments and financial reporting, and will work in close cooperation with the AMCU.

The person in charge of this project is:

Mr. Boris Filipov

Attaché

Sector Manager

Private Sector Development, Public Procurement and Competition

Delegation of the European Union to Ukraine

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The Programme Administration Office (PAO) under the National Agency of Ukraine on Civil Service is the administration responsible for coordination of the preparation of Twinning projects and support for their implementation. It also provides advisory and methodological support to public authorities during the preparation and implementation of Twinning projects.

Role of PAO:

The PAO is the central point of communication between the EU Delegation and the Beneficiary Administrations and between the MS Administrations and the Beneficiary Administrations.

The PAO drafts a reference programming document for the Twinning projects in the Beneficiary country.

The PAO assists the EU Delegation in the organisation and management of selection meetings

The PAO, together with the Commission, checks that the good financial management of the Twinning project is in compliance with EC rules;

The PAO receives and examines all Twinning project reports (including mission reports, financial reports etc.);

The PAO supports all Twinning stakeholders, including beneficiary administrations, Member States and the EU Delegation.

The person in charge at the PAO in Ukraine is:

Ms Maryna Kanavets

Director of Twinning Programme Administration Office in Ukraine

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6.2 Main counterpart in the Beneficiary Country

The beneficiary of the Twinning project is the Antimonopoly Committee of Ukraine.

The Antimonopoly Committee of Ukraine

45, Vasyl Lypkivsky Metropolytus

Kiev, 03035, Ukraine

Tel: +38 (0)44 251 62 62

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BC Project Leader:

Ms Anna Artemenko

State Commissioner

The Antimonopoly Committee of Ukraine

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RTA Counterpart:

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The RTA Counterpart will work with the RTA on a daily basis to ensure proper coordination and implementation of all the activities of the project and achieve an efficient transfer of knowledge. He/she will be responsible, together with the RTA, for finalising the reports to be submitted to the PLs for the Project Steering Committee meetings.

6.3 Contracts

Only one Twinning contract is foreseen for this project.

7 IMPLEMENTATION SCHEDULE (INDICATIVE)

7.1 Launching of the call for proposals

September 2015

7.2 Start of project activities

March 2016

7.2 Project completion

February 2019

7.4 Duration of the execution period (number of months)

The legal duration of the Twinning Project period is 35 months.

The implementation period of the project is 32 months,

8 SUSTAINABILITY

The sustainability of the project will be achieved through the professional implementation of all project activities, including advice provided, documents prepared and submitted, training delivered and the continued availability and employment of trained personnel in the AMCU headquarters and territorial offices.

Towards the end of the project, a series of recommendations for the improvement of the AMCU structure and operating procedures in line with their revised duties and responsibilities will have been agreed with AMCU senior management. These recommendations will have taken account of the resources available from the State budget to finance it and will therefore, by definition, be sustainable.

All Twinning Project activities will be undertaken jointly between the MS and the BC. Working Groups (WG) will be formed early in the project implementation period and these will comprise Ukrainian and EU experts. Members of the Working Groups will meet as and when required to share information; discuss technical issues and ensure project outputs are relevant and realistic for current Ukrainian circumstances. The fact that Ukrainian experts within AMCU will have worked closely with counterpart EU experts during the implementation of project activities will form a valuable human resource and it is hoped that these Ukrainian experts will cascade the information to colleagues, using the “train the trainers”

approach. Therefore, the progress, development and success of the Twinning project will be the joint responsibility of the MS partner and the BC.

The dissemination of project results, training materials and all project outputs, such as advisory notes, will be freely available to all relevant AMCU staff. Consideration will be given to uploading appropriate materials to the AMCU website. All materials will be available electronically and distributed to relevant AMCU staff via e-mail

9 CROSSCUTTING ISSUES

9.1 Equal Opportunity

The dimension of equal opportunity and gender equality will be integrated into all levels of the project. The project will promote non-discrimination and treat males and females equally. The MS partner will lead by example during the implementation of all project activities.

9.2 Environment

Environmental aspects are not directly relevant to the project, but promoting electronic communication tools and e-based systems (exchange and dissemination of information, training materials, etc) will ultimately benefit the environment, by reducing the amount of paper used during printing. Video-conferencing may be used during training events, to reduce the need for AMCU staff to travel from regional offices to Kiev to participate in WG meetings and/or project training activities. This would obviously save “down-time” (regional staff travelling to and from Kiev, plus associated travel and subsistence costs) but it would also reduce the use of vehicle fuel and amount of associated emissions (widely associated with climate change).

9.3 Good Governance

The project will promote and advocate the professionalisation of the AMCU in line with best EU practices at every appropriate opportunity, thus building an increasingly service-oriented administration based on standard operating procedures and ethical norms and standards.

By promoting an institutional culture of openness, accountability and transparency, the project will increase of level of credibility and integrity among Government Departments and Agencies, thus decreasing accusations of corruption and other negative practices. The project will act as an example of positive administrative reform.

10 CONDITIONALITY AND SEQUENCING

10.1 Conditionality

The following contributions expected from the AMCU are regarded as important preconditions for the successful implementation of the project:

- The Twinning project receives high level political and professional support by the leaders of the AMCU;

- Strong involvement/commitment of AMCU staff at all levels;
- Deploying the necessary personnel to activities connected with the project;
- Assigning an operational PSC to monitor that all components of the Twinning project are executed timeously;
- Ensuring coordination between institutions connected with the project;
- Ensuring access to the all necessary information and documents in accordance with legislation in force;
- Supply of office accommodation, equipped with computer, telephone, internet access, printer, scanner to MS in-country staff and visiting experts;
- Providing suitable venues and equipment for training sessions and seminars that will be held under the project.

10.2 Sequencing

The sequencing of all Twinning project activities will be prioritised in close cooperation and coordination between the MS and BA and will work according to the Logical Framework, which will form part of the Twinning project contract. The RTA and RTA Counterpart will meet regularly, perhaps daily, to ensure the smooth implementation of project activities. The Quarterly Project Steering Committee meetings will provide the RTA and RTA Counterpart with an opportunity to review actual project implementation against what had been planned and to address any issues regarding any delays or interruption to the activity schedule.

There are no associated equipment purchases required for the smooth implementation of Twinning project activities, nor does its success depend on the adoption of any new national legislation or accompanying acts.

ANNEXES

Annexes to project Fiche

1. Logical framework matrix
 2. List of EU legal acts to be used in the twinning project.
 3. Organisational structure of the AMCU
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Annex 1: LOGFRAME PLANNING MATRIX	Programme name and number: ENPI - Framework Programme in support of EU-Ukraine agreements (AAP 2013)
Title of the Twinning project: Strengthening institutional capacities of the Antimonopoly Committee of Ukraine to conduct market studies and effectively enforce competition law in accordance with EU standards	
Beneficiary: Antimonopoly Committee of Ukraine	Total budget: 1,800,000 EUR

Overall objective	Objectively verifiable indicators	Sources of Verification
Increased transparency and consistency of the competition policy of Ukraine achieved through further approximation of the national legislation with EU standards, improved law enforcement and competition advocacy on the basis of closer cooperation between the competition authorities of Ukraine and EU Member States.	<p>The legislative framework and law enforcement practices are closer aligned with the relevant EU <i>acquis</i> as envisaged under Title IV, Chapter 10, Section 1 of the Association Agreement</p> <p>Law enforcement record of the AMCU has improved</p> <p>Sustainable working relationship established between AMCU and NCA of the EU Member State(s)</p>	<p>Competition Law of Ukraine (LPEC) and the AMCU regulations.</p> <p>Published AMCU decisions, decisions by the national courts, project reports, press releases and media reports</p> <p>Official reports on the implementation of the Association Agreement published by the relevant EU and Ukrainian institutions.</p>

Project purposes	Objectively verifiable indicators	Sources of Verification	Assumptions
<p>Further approximation of the national competition legislation with EU standards in compliance with the EU-Ukraine Association Agreement</p> <p>Strengthening of the institutional capacity of the Antimonopoly Committee of Ukraine to effectively enforce competition law and to carry out market studies to promote competition in important sectors of the national economy</p>	<p>The Ukrainian competition law and law enforcement practices brought in line with the relevant EU <i>acquis</i>.</p> <p>AMCU staff trained to conduct market studies and interpret results of market analysis</p> <p>AMCU institutional structure is adjusted to fulfil key antitrust enforcement functions and to conduct market studies as an important competition advocacy instrument</p> <p>At least 150 AMCU staff trained in the principles & modern practice of law enforcement and promotion of competition</p>	<p>Amended competition legislation of Ukraine</p> <p>Advisory notes by the Project experts</p> <p>Training materials and reports</p> <p>Published market studies in the selected sectors</p> <p>Project Mission & Quarterly Reports; Final Report; Publication of Market studies; Advisory Notes</p>	<p>Support and commitment of the Ukrainian Government and other stakeholders (both in the public and private sectors) to apply competition rules</p> <p>AMCU is directly involved in preparation of the amendments to the competition legislation.</p> <p>AMCU staff are available and ready to take part in the training programme and to apply new approaches and methods</p> <p>Continued political support for the process of the legislative approximation with EU rules and law enforcement practices</p> <p>No major national & international policy change affecting the aims and objectives of the project</p>

Project Results	Objectively verifiable indicators	Sources of Verification	Assumptions
<p>Result 1. Ukraine successfully meets obligations under Title IV Chapter 10 “Competition”, Section 1 “Antitrust and Mergers”, Articles 253-256 of the EU-Ukraine Association Agreement and approximates the national competition law and implementing regulations to the relevant EU rules and standards</p>	<p>The national competition law and AMCU regulations are approximated to the relevant EU rules, in particular, concerning the following aspects:</p> <ul style="list-style-type: none"> - alignment of the criteria for exemption of restrictive agreements with the criteria established in Article 101(3) of the TFEU, - establishing higher thresholds for notification of mergers and differentiation between assessment of horizontal and non-horizontal mergers; - establishing the legal basis for pre-notification consultations of merging parties with the AMCU and a simplified procedure for approval of certain mergers; - introducing new block exemptions for vertical agreements, - introducing block exemptions for categories of technology transfer agreements. 	<p>Updated provisions of LPEC and procedural regulations by the AMCU</p> <p>Mission reports from STEs; Project Quarterly Reports and Final Report</p> <p>Advisory notes</p>	<p>There is a continued political support for the legislative approximation with the EU competition rules and law enforcement standards</p> <p>No major national & international policy changes occur to affect the competition policy and AMCU management</p> <p>AMCU involves Twinning experts in the legislative drafting on merger control and exemption of certain categories of restrictive agreements from the prohibition of concerted actions</p> <p>AMCU staff is available for training and ready to apply new approaches and legal provisions for block exemptions</p> <p>Legislators and other stakeholders in the competition policy of Ukraine are fully aware of the approaches to regulation of vertical agreements and mergers in EU.</p>
<p>Result 2. The merger control regime is aligned with EU standards established by EU Merger Regulation (EC) 139/2004, as envisaged in Title IV, Chapter 10, Articles 255(6) and 256(2) of the EU–Ukraine Association Agreement</p>	<p>Revised AMCU methodologies (regulations) for notification of mergers and for assessment of horizontal mergers</p> <p>AMCU adopted a simplified procedure for notification and approval of certain categories of mergers and AMCU staff are trained in application of the simplified procedure</p> <p>AMCU revised methodology on the definition of the relevant market</p> <p>AMCU staff are trained in conducting</p>	<p>AMCU Regulation on assessment of horizontal mergers</p> <p>AMCU regulation on the application of a simplified procedure for notification and approval of certain categories of mergers</p> <p>AMCU guidelines on relevant market definition</p> <p>Programme of the workshops and the list of participants</p> <p>Training materials and reports</p>	<p>The legislators differentiate between horizontal and non-horizontal (vertical/conglomerate) mergers and provide legal grounds for a simplified procedure for approval of certain categories of mergers.</p> <p>AMCU set up in a timely manner working groups (task forces) to draft the necessary amendments for new notification procedures; regulations for assessment of horizontal mergers, and for the application of a simplified procedure for approval of mergers</p> <p>AMCU staff available for training and for</p>

	<p>preliminary consultations with merging undertakings prior to notification</p> <p>AMCU staff have better knowledge and understanding of the standard methods of assessment of horizontal mergers (in particular, in application of the test for substantial impediment of effective competition and other methods of assessment of mergers applied in EU)</p>	<p>Mission reports from STEs; Project Quarterly Reports and Final Report</p>	<p>participation in the working group meetings drafting new AMCU procedures and guidelines for merger control</p>
<p>Result 3. Legal certainty and fairness of the law enforcement procedures applied by the AMCU will be improved to meet the requirements of Council Regulation (EC) 1/2003 of 20 December 2002.</p>	<p>AMCU procedure for carrying out inspections (dawn raids) is updated to reflect the requirements of Council Regulation (EC) 1/2003</p> <p>The AMCU guidelines (methodology) on acceptance of commitments by undertakings involved in restrictive agreements adopted and AMCU staff's practical skills in the evaluation of remedial actions improved</p> <p>Transparency of AMCU procedures (e.g. access to AMCU files for parties involved) improved, the skills of the AMCU staff in carrying out inspections, in handling complaints, collecting and processing information during inspections (dawn raids) improved</p> <p>The structure, format and comprehensiveness of AMCU decisions and recommendations (statements) improved</p>	<p>A comprehensive gap analysis on the regulatory framework for prior approval of restrictive agreements and concerted action in Ukraine in comparison to the system established under Council Regulation (EC) 1/2003 of 16.12.2002</p> <p>Published AMCU procedures for investigation of cases/ for carrying out inspections (dawn raids)</p> <p>AMCU guidelines for acceptance of commitments of undertakings</p> <p>AMCU internal regulations and methodologies for handling complaints and information</p> <p>Training agenda and list of participants</p> <p>Training materials and reports</p> <p>Mission reports from STEs; Project Quarterly Reports and Final Report</p>	<p>AMCU management and staff are prepared for, accept and put into practice procedures concerning inspections of undertakings.</p> <p>Senior AMCU management supports and encourages the participation of the relevant AMCU staff in Working Groups and in training courses</p>
<p>Result 4. The competition advocacy function is improved: relevant methodology is developed, the AMCU institutional adjustments required to</p>	<p>Three comprehensive market studies (inquiries) in important sectors of the national economy are carried out and their results are published along with</p>	<p>Market studies and recommendations published by the AMCU</p>	<p>Active interaction between the AMCU and other public authorities, private economic operators and consumers in the sectors</p>

<p>conduct comprehensive market studies are made, and market studies in selected sectors of the national economy are published.</p>	<p>possible remedies for the existing competition concerns, for improvement of market structures, de-monopolisation and liberalisation policies in the relevant sectors.</p> <p>The AMCU methodologies on conducting market studies (market inquiries) are adopted</p> <p>AMCU staff is trained in conducting market studies.</p> <p>Practical skills of the AMCU specialists in collecting, analysing and interpreting market data improved;</p> <p>Institutional interaction improved to support organisation and implementation of the market studies.</p>	<p>Mission reports from STEs; Project Quarterly Reports and Final Report</p> <p>Training agenda and list of participants (including study visits to a Member State NCA)</p> <p>Training materials provided to the AMCU</p>	<p>subject to market studies.</p> <p>Strong intention of the AMCU management to enhance the competition advocacy toolkit with market studies and to publish conclusions based on market studies.</p> <p>Sufficient staff is assigned, necessary adjustments in the institutional structure to carry out market studies are implemented, workload related to market studies are incorporated into the job description of relevant AMCU staff members</p> <p>Support and commitment of the AMCU senior management to delegate appropriate staff to work with Twinning experts on market studies and participate in practical training</p>
<p>Result 5. The AMCU institutional structure and capacities improved to meet challenges of the competition policy reforms. The AMCU organisation is refocused on the most serious infringements of the competition law, control of horizontal mergers that substantially restrict competition and on comprehensive market studies (analysis).</p>	<p>The institutional structure of the AMCU is adjusted according to the recommendations provided by the Project in response to the new and updated responsibilities of staff.</p> <p>The AMCU staff knowledge and skills developed through participation in study visits to EU Member State NCAs and through attendance at relevant international events, conferences and seminars on competition policy and law (e.g. OECD, UNCTAD, ICN)</p>	<p>New/revised organisational structure of the AMCU</p> <p>Mission reports from STEs; Project Quarterly Reports</p> <p>Reports by AMCU managers and staff members on participation in international events \ Final Project Report</p>	<p>Strong Political will and commitment from the Government and the AMCU leadership to undertake adjustments in order to refocus AMCU priorities on the investigation of the most serious infringements; the most risky mergers and on regulatory and structural changes necessary according to market studies.</p> <p>Commitment and support from senior AMCU management to enable relevant AMCU staff members to participate in International events, study visits, internships and to use the recommendations made as a result of the participation in such events and meetings, seminars, etc.</p>

Activities	Means	Assumptions
Activities at the Project Inception Phase		
The Opening Conference and “Kick-Off” meetings	Senior Project team present aims and objectives of what is to be carried out within the Twinning project Simultaneous interpretation Project visibility materials (flier/booklet summarising the aims and objectives of the Twinning project)	Participation of the representative of the Ukrainian Government, AMCU, market regulators, EU Delegation; PAO; Member State Embassy(ies) (of implementing MS(s)); other relevant institutions; media and press
Component 1: Approximation of competition law and regulations to EU standards		
<p>Activity 1.1 Drafting legislative provisions to align the national provisions with relevant EU rules in compliance with the Title IV Chapter 10 Section 1 of the EU-Ukraine Association Agreement, in particular concerning:</p> <ul style="list-style-type: none"> - Exemption of restrictive agreements from the prohibition of concerted actions and the alignment of the criteria established in Articles 7-10 of LPEC with the relevant criteria of Article 101(3) of the TFEU; - Approximation of the national system of prior approval of concerted actions with the general approach to control of restrictive agreements and concerted practices established under the Council Regulation (EC) No 1/2003 of 16 December 2002; - Approximation of the legislative requirements for prior notification and assessment of horizontal mergers in accordance with Council Regulation (EC) 139/2004 of 20 January 2004; revision of relevant procedures for notification of mergers, in particular, i) introduction of the pre-notification informal consultations of merging undertakings with the AMCU; ii) introduction of a simplified procedure for approval of certain categories of concentrations of undertakings; iii) establishing legal certainty concerning the scope of information required for notification mergers; and iv) the discretion of the competition authority to extend the deadlines for the adoption of decisions concerning mergers. 	Short-term experts Translation and Interpretation	AMCU or inter-agency Working Groups are set up and Twinning experts have full access to the relevant information; Agreement reached among politicians, senior AMCU management and other stakeholder institutions on updating legislation, procedures and regulations; The need for change is acknowledged by the business community and public at large. AMCU management are committed and release relevant AMCU staff to work with EU STEs in Working Groups
Activity 1.2 Drafting AMCU regulations for vertical agreements and	Short-term experts	There is political will and commitment from senior AMCU management to re-draft and update relevant

<p>concerted practices</p> <ul style="list-style-type: none"> - Regulation of vertical agreements and concerted practices in accordance with the requirements established in Article 101(3) of the TFEU and Commission Regulation (EU) No 330/2010 of 20 April 2010, specifically concerning provisions of Articles 1- 4, 5 – 8; - Block exemption regulation for certain categories of technology transfer agreements in accordance with the requirements of Article 101(3) of the TFEU and Commission Regulation (EU) No 316/2014 of 21 March 2014 	<p>Translation and Interpretation Interpretation</p>	<p>regulations and procedures</p> <p>AMCU Working Group engaged and assuring full access to information</p> <p>AMCU management committed to assign relevant staff for participation in Twinning project Working Group(s)</p>
<p>Activity 1.3. Providing support to the AMCU on an <i>ad hoc</i> basis in the format of inter-ministerial and parliamentary</p>	<p>Short-term experts Translation and Interpretation</p>	<p>AMCU is relying on the Project experts recommendations and there is a political will and commitment to update relevant legislative acts and secondary legislation as recommended by EU experts</p>
<p>Component 2: Alignment of Merger Control Regime with EU Standards</p>		
<p>Activity 2.1 Drafting regulations and providing recommendations to the AMCU concerning alignment of the merger control provisions to Council Regulation (EC) 139/2004 of 20 January 2004, in particular, through the following activities:</p> <ul style="list-style-type: none"> – Revision of the existing AMCU procedure for the notification of mergers. – Preparation of a concept paper with recommendations on the draft AMCU Regulation (Guidelines) for the assessment of horizontal mergers, <i>or</i> drafting of a new guideline (regulation) for the assessment of horizontal mergers. – Preparing methodology for assessment of horizontal mergers and application of the test on substantial impediment of effective competition and other standard methods for the assessment of horizontal mergers – Advisory provision for the implementation of pre-notification consultations between merging undertakings and the AMCU – Preparation of a concept paper with recommendations for the AMCU guidelines (regulations) on the simplified procedure for prior approval of certain categories of concentrations of undertakings in accordance with Commission Notice 2013/C No 336/04. – Providing advice on the scope of necessary information and the competition authority’s discretion to extend the deadlines of final 	<p>Short-term experts Translation and Interpretation</p>	<p>A Working Group will be set up and full access to necessary information is assured for EU experts;</p> <p>Agreement reached among stakeholder institutions on updating legislation, procedures and regulations;</p> <p>There is political will and commitment from senior AMCU management to re-draft and update relevant regulations, to support the participation of AMCU staff in Twinning project activities and involve EU experts in relevant Working Groups;</p> <p>The need for change is acknowledged</p>

<p>decisions on notified mergers</p> <ul style="list-style-type: none"> – Preparation of recommendations for the revision of the AMCU guidelines (methodology) for the definition and delineation of relevant markets in compliance with the relevant EU standards for the assessment of horizontal mergers (this topic is also relevant to the AMCU investigations in abuse of dominance cases) 		
<p>Activity 2.2 Training activities to support the development of merger control system, in particular:</p> <p>A workshop on the simplified procedure for notification and approval of certain categories of mergers that do not raise competition concerns.</p> <p>Two workshops on the assessment of horizontal mergers, including the application of the test on substantial impediment of effective competition and the procedural and substantive requirements for acceptance of commitments by merging undertakings at various stages of a merger case.</p> <p>A workshop dedicated to the organisation of preliminary consultations between the merging undertakings and the competition authority; the scope and rules for handling information received from undertakings at the preliminary consultation stage.</p> <p>A seminar dedicated to the definition and delineation of relevant markets based on product substitutability; geographical and temporal dimensions of the market (with case law and examples of complex and dynamically developing markets, such as: media, retail services, energy, environment, pharmaceuticals, financial services, transport, etc.)</p>	<p>Short-term experts</p> <p>Translation and Interpretation</p>	<p>The AMCU staff are available for participation in the training programme of the Twinning project</p> <p>AMCU provide venues and refreshments for all participants</p>
<p>Component 3: Improvement of Competition Law Enforcement by AMCU</p>		
<p>Activity 3.1 Analysis of the existing regulatory and institutional framework, AMCU procedures, and providing recommendations for the alignment of AMCU law enforcement practices with Council Regulation (EC) 1/2003, in particular, through the following activities:</p> <ul style="list-style-type: none"> - The preparation of a comprehensive gap analysis of the effectiveness of the regulatory and institutional framework for prior approval of concerted actions in Ukraine in comparison with the EU system of control of restrictive agreements and concerted practices according to Council Regulation (EC) 1/2003; 	<p>Short-term experts</p> <p>Translation and Interpretation</p>	<p>AMCU senior management are engaged and receptive to receiving and considering recommendations by Twinning experts and acting on them, as appropriate;</p> <p>A Working Group engaged and full access to relevant information is assured for the Twinning experts;</p>

<ul style="list-style-type: none"> - The preparation of a concept paper with recommendations to the AMCU regarding the settlement of competition concerns identified during investigations (or in the existing context during the assessment of notified restrictive agreements) through acceptance of commitments by undertakings; - An analysis of the existing legal framework and AMCU procedures for handling complaints; for processing information during investigations and inspections (dawn raids); for access to the AMCU file; and providing recommendations for a revision of the AMCU procedures non-compliant with the requirements of Council Regulation (EC) 1/2003. - An analysis of the structure and comprehensiveness of the AMCU decisions in antitrust cases and the provision of clear recommendations for improving the format and content of the decisions and statements by the AMCU, with a particular focus on the protection of commercially sensitive and confidential information. 		
<p>Activity 3.2 Training activities supporting the competition law enforcement in Ukraine, in particular:</p> <ul style="list-style-type: none"> - A workshop dedicated to the principles and regulatory requirements applied in EU for the acceptance of commitments by undertakings; - A workshop on the structure, comprehensiveness of the AMCU decisions, recommendations and publications in compliance with the international standards. 	<p>Short-term experts Translation and Interpretation</p>	<p>AMCU Staff is interested in training programme offered;</p>
Component 4: Market Studies in Selected Sectors and Strengthening of Competition Advocacy		
<p>Activity 4.1 Drafting AMCU guidelines on market studies (procedures, organisation, structure of the study, analysis of market characteristics, relevant market definition, remedial actions etc. and implementation of results)</p> <p>Activity 4.2 Drafting ToR for three market studies to be undertaken by the AMCU in particular sectors; assistance in organisation of the teamwork and assessment of collected evidence; analysis of remedial actions and publication of the market study (inquiry) reports.</p>	<p>Short-term experts Translation and Interpretation</p>	<p>Support and commitment from senior AMCU management to allow the participation of relevant AMCU staff to work with EU STEs during Working Group meetings to work on these guidelines</p> <p>Free and open access to all relevant documents and files</p>
<p>Activity 4.3 Market studies in the selected sectors will be supported by:</p> <ul style="list-style-type: none"> - An introductory seminar on the role of market studies in an effective competition policy; procedural requirements the structure of market 	<p>Short-term experts Translation and Interpretation</p>	<p>Support and commitment from senior AMCU staff to enable the participation of all relevant AMCU staff in the market study seminar.</p>

<p>studies; organisation of the team work; methods of collecting evidence; analysis and interpretation of market data, and necessary remedial actions.</p> <ul style="list-style-type: none"> - A study visit to the NCA of an EU Member State on the practical aspects of the implementation of comprehensive market studies (investigations) and using the market study (inquiries) results for the promotion of competition and the positive development of the regulatory framework. 		<p>Support from the AMCU to provide an appropriate seminar venue and any refreshments considered necessary</p> <p>Reports, lessons learned by participants in the Study Visit are accepted and recommendations implemented in Ukraine, if appropriate</p>
<p>Component 5. Strengthening Institutional Capacity of AMCU to Implement Reforms in Competition Policy</p>		
<p>Activity 5.1 Analysis of the AMCU institutional capacities will be undertaken in the context of antitrust, merger control and competition advocacy functions, recommendations will be provided for reallocation of AMCU resources to ensure the effectiveness of its performance;</p> <p>Activity 5.2 Interviews (or an anonymous survey) with AMCU management, staff, representatives of the business community, law firms, the judiciary and other public authorities involved in competition policy in Ukraine in order to identify possible inefficiencies and lack of capacities in the organisational structure, and a report will be prepared for the AMCU concerning results of the interviews (or survey) and clear and comprehensive recommendations provided;</p> <p>Activity 5.3 An advisory note will be prepared concerning the institutional structures in an EU MS, including procedures and safeguards for the proper handling of various categories of information by competition authorities (especially confidential information, information submitted by complainants, merger notifications, formal and informal statements by undertakings, applications for leniency programme, evidence obtained during inspections and dawn raids, answers to official inquiries, and other categories of information)</p>	<p>Short-term experts Translation Interpretation</p>	<p>Support and commitment from AMCU senior management to enable the appropriate interviews or survey to take place</p> <p>AMCU provide free and open access to all information requested by EU STEs</p> <p>AMCU senior management support these initiatives by allowing the participation of all relevant AMCU staff in Working Group meetings with EU STEs</p> <p>Support and commitment from senior AMCU management to make the necessary changes as recommended by the Working Group(s) to bring Ukrainian procedures more into line with those functioning in the EU</p>
<p>Activity 5.4. Participation of the AMCU in international events and study visits dedicated to institutional development, in particular:</p> <ul style="list-style-type: none"> - A study visit to the NCA of an EU Member State for the AMCU case handlers with the purpose of sharing expertise in: handling complaints and confidential and commercially sensitive information; the organisation of case hearings and the requirements for the protection of the rights of parties, complainants and other persons involved in competition cases. - Two study visits for AMCU management to the MS NCA to learn about the organisational structures and interaction of different NCA units, 	<p>Per Diems Travel Translation and Interpretation</p>	<p>Working Group engaged and assuring full access to information</p> <p>There is interest from AMCU staff to be trained</p> <p>Support from senior management in AMCU that lessons learned from the Study Visits and internships can be discussed and implemented in Ukraine, if appropriate</p>

<p>including the scope for outsourcing and its interaction with the European Commission, sector regulators, Parliaments, ministries and the national judiciary in the EU Member State(s).</p> <ul style="list-style-type: none"> - Attendance at 3 international events (e.g. OECD, UNCTAD, ICN conferences, workshops, seminars) dedicated to competition policy and law by AMCU Commissioners and senior staff. - Internships for 2 members of AMCU staff for one month, where they will be embedded within the NCA of an EU MS to become familiar with the day to day functioning of an EU-compliant Competition Authority 		
Activities at the Project Finalisation Phase		
<p>Final Conference of the Twinning Project</p>	<p>Twining project's presentations of the results achieved; what has changed and what else will change in the AMCU and Ukraine as a result of project activities</p> <p>Simultaneous interpretation</p> <p>Project visibility materials (flier/booklet summarising the results and achievements of the Twinning project)</p>	<p>Participation of the representative of the Ukrainian Government, AMCU, market regulators, EU Delegation; PAO; Member State Embassy(ies) (of implementing MS(s)); other relevant institutions; media and press</p>

Annex 2:

List of EU legal acts to be used in the Twinning project

General antitrust rules, implementing regulations and guidelines

1. Treaty on Functioning of the European Union (Articles 101-102, specifically provisions of Article 101(3))
2. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, *OJ L1, 04.01.2003, p.1-25*
3. Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, *OJ L123, 27.04.2004, p. 18-24*
4. Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (2006/C 210/02)
5. Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03), *OJ C 372, 9.12.1997, p. 5–13*

Rules and guidelines applicable to block exemptions

6. Regulation No 19/65/EEC of 2 March of the Council on application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices, *OJ 36, 6.3.1965, p. 533–535*
7. Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices
8. Commission notice - Guidelines on Vertical Restraints of 10/05/2010, *OJ C130, 19.05.2010, p. 1*
9. Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements, *OJ L93, 28.03.2014, p.17-23*
10. Communication from the Commission — Guidelines on the application of Article 101 of the Treaty on the Functioning of the European Union to technology transfer agreements (2014/C 89/03), *OJ L93, 28.03.2014, p.17-23*
11. Commission Notice — Guidelines on the application of Article 81 of the EC Treaty to technology transfer agreements (2004/C 101/02), *OJ C101, 27.4.2004, p. 2–42*
12. Council Regulation No 2821/71 on application of Article 85 (3) [now 81 (3)] of the Treaty to categories of agreements, decisions and concerted practices, *OJ L 285, 29.12.1971 p. 46-48*
13. Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, *OJ C 11, 14.1.2011, p. 1–72*

Procedural standards applied by the European Commission

14. Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty
15. Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty (2004/C 101/05)
16. Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (2005/C 325/07)
17. Guidance on the preparation of public versions of Commission Decisions adopted under Articles 7 to 10, 23 and 24 of Regulation 1/2003

Rules applicable to merger control

18. Council Regulation (EC) No/139/2004 of 20 January 2004 on control of concentrations between undertakings (the EU Merger Regulation), *OJ L 24/1, 29.1.2004, p. 1*
19. Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (, *OJ L 133, 30.4.2004, p. 1*
20. Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertaking (2004/C 31/03)
21. Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01), *OJ C95 of 16.04.2008*
22. Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, (2013/C 366/04) *OJ C 366, 14.12.2013*
23. Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, *OJ C 267, 22.10.2008, p. 1–27*

Annex 3: Organisational structure of the AMCU

