



Competition Law in the Energy Community – Waking up the Sleeping Beauty

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Overview of the Ukrainian fuel and energy sector

Current status

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- Ranks in the top 10 in Europe
- Ranks in top 30 in the World
- Occupies ~ 30% of national economy
- Provides transportation ~ 20% of annual EU natural gas consumption

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- Low level of Green Energy
- * Low energy efficiency rate by product
- High market concentration (monopolized gas sector (mining, supply, distribution are concentrated by single legal entity)
- Problematic coal market (loss of mines because of war conflict, * * Commodity Exchange is undeveloped
- Nontransparent and unsystematic State Aid

To be

- Unbundling process in finalized in producing and distributing of energy
- Market concentration lowering (new players to come)
- Full-integrated energy system to the EU
- Balanced structure of energy resources supply
- Free-trade commodity exchange operates
- Ability to chose energy supplier by consumer
- Renewables role increase
- TPES decrease
- Enhancing transparency of natural monopolies' activities
- Creating equal conditions for pricing, resourcing and access of all WME's participants to electricity networks
- Establishing price competition between electricity producers and importers
- Facilitating procedures for connection to electricity networks
- Abolishing (reducing) cross-subsidization
- Reforming coal sector
- State AID process standardization

At the end of 2017 we are in process of transformation



Ongoing transformation

3rd Energy Package adopted

Natural Gas Market

Law on Natural Gas adopted (2015)

Law on State Aid (in a part of energy)
(came into force 2017)

Law on energy and utilities the
National Regulatory Commission adopted (2016)

Energy Market

Law on Electricity Market adopted (2017)

Law on housing energy efficiency adopted (2017)

* - other indirect legislation adopted (2017)

DONE

TO BE DONE

- Manage subsidizing (as its ineffective mechanism creates barriers for new market participants)
- Draft the criteria for entities that are able to involve into circle of companies with special responsibilities
- Drive unbundling to ruin the corporate relations between pivotal supplier and entities operating in related markets
- Subsidiary legislation development (during the transition period by July 2019)
- Drive unbundling (to split transmission and supply)
- Complex of technical actions to be prepared for the synchronizing with ENTSO-E
- To arrange terms of implementation of State Aid legislation in the agreement of EEC creation and Association Agreement with the period defined for energy market reforming



Competition Agenda at Energy Market

Actions taken 2016-2017 by AMCU



	Target Authority	Role & Competence	Enforcement - State Aid	Advocacy
Framework	 Cabinet of Ministers (General Agenda)	<ul style="list-style-type: none"> Approves state policy and strategy Legislative initiative Approval of secondary legislation (200 acts to be approved for New Energy Market of 2019) ! <i>Most of them to be approved by AMCU</i> Main grantor of state aid 	<ul style="list-style-type: none"> Obligatory monitoring and notification on state aid in the energy sector as of Aug 2, 2017 	<ul style="list-style-type: none"> Initiate full-fledged coal commodity exchange * No intermediary for special responsibilities operators while purchasing natural gas both from extractors or importers * Abolish barriers for importers (administrative requirements) – <i>Case opened by EC</i>
	 Ministry of Energy (Specific regulation)	<ul style="list-style-type: none"> Defines state policy and strategy in Energy sector Legislative initiative (laws & secondary legislation) Makes and approves energy balances Initiates state aid 	<ul style="list-style-type: none"> Bring into accordance the demands for state aid for coal mines developed by Cabinet of Ministers in 2017 Comments on law of Ukraine on “Debt servicing at wholesale electricity market” and law of Ukraine on “Changes to tax code” 	<ul style="list-style-type: none"> Ability for the importers to participate in the market volume filling Transparent rules of forming energy balances
Regulatory	 NCREU (Pricing/Licensing)	<ul style="list-style-type: none"> Defines and controls licensing conditions Defines tariffs Control of compliance 		<ul style="list-style-type: none"> Eliminate barriers for new market player entry Rules of forming wholesale energy price
	Wholesale Electricity Market Council (advisory authority)	<ul style="list-style-type: none"> Wholesale electricity market advisory 	 <ul style="list-style-type: none"> * Mark if coincides with EC position 	<ul style="list-style-type: none"> Deregulation of pricing for imported energy All decision to be preliminary checked on competition impact

Framework

Regulatory

Consulting



Actions to be done in end 2017- 2018 by AMCU



Antitrust	State Aid	Advocacy
<p>1) EC addressed concerns to Government because of market rules changes regarding G-type coal priority (For now: under AMCU consideration)</p> <p>2) DTEK Case. Company allegedly has dominant position on electricity generation market. DTEC being vertically integrated company allegedly artificially increases cost for energy coal to increase its profit. DTEC allegedly decreased supply (physical withholding) - illegitimate unplanned outages</p> <p>April 2017: AMCU issued obligatory recommendations to implement measures regarding procurement of energy coal for electricity generation, on competition basis.</p>	<p>1) Reviewing of notification on new state aid as government guarantee to service the debt of SE Energoatom</p> <p>2) Reviewing of notification on new state aid as investment projects for coal mines (6 projects)</p> <p>3) Arrangement of terms of implementation of State Aid legislation in the agreement of EC creation and Association Agreement with the period defined for energy market reforming</p> <p>4) State Aid programs alignment with law on State Aid</p>	<p>1) Research on PJSC NAC Naftogaz market position (monopoly check)</p> <p>2) Research on territories electrification (connection to power networks)</p> <p>3) AMCU participation in the legislation development (e.g. New electricity market)</p>



Conclusions & Expectations

- 1. In the new époque of market liberalization the role of AMCU will raise dramatically**
- 2. High attention to be paid on the most powerful market players**
- 3. Particular area of responsibility: control of unbundling process at energy market**
- 4. Attraction of new investors to energy sector when pure competition exists**
- 5. Disappearing of unprofitable market players being replaced by the ones much more innovative and environmental friendly**
- 6. Proper control of State Aid that will balance the competition between the private and governmental market players**

What we expect from EC: Share practice of other EU markets during the transformation process (from monopolized market to competitive) - Not to make the mistakes already done before

Experience level increase of local expert community (forums, trainings, seminars, workshops)



Conclusions & Expectations



**Thank you.
Any questions?**