HARMONISATION OF PUBLIC PROCUREMENT SYSTEM IN UKRAINE WITH EU STANDARDS

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REPORT ON THE SECOND PUBLIC PROCUREMENT STAKEHOLDER AWARENESS – RAISING ROUNDTABLE ON 7 JULY 2017

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ABBREVIATIONS

<table>
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<th>Abbreviation</th>
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<tr>
<td>AMCU</td>
<td>Anti-Monopoly Committee of Ukraine</td>
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<td>CPB</td>
<td>Centralised Purchasing Body</td>
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<td>EU</td>
<td>European Union</td>
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<td>IT</td>
<td>Information Technology</td>
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<td>MEDT</td>
<td>Ministry of Economic Development and Trade of Ukraine</td>
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<td>PFM</td>
<td>Public Finance Management</td>
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<td>PPD</td>
<td>Department of Public Procurement Regulation of the MEDT</td>
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<td>PPL</td>
<td>Law of Ukraine “On Public Procurement”</td>
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<td>Prozorro</td>
<td>Ukrainian e-procurement system</td>
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<td>State Owned Enterprise “Prozorro”</td>
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<td>WTO GPA</td>
<td>World Trade Organisation Government Procurement Agreement</td>
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1. INTRODUCTION

The EU funded Project: “Harmonisation of Public Procurement System in Ukraine with EU Standards” commenced work in Kiev on 11 November 2013. The Project is being implemented by a consortium led by the leading international firm CROWN AGENTS Ltd and will operate (under extended arrangements) until November 2017. The the Project is working: “to contribute to ....the establishment of a comprehensive and transparent regulatory framework for public procurement, an efficient public procurement institutional infrastructure, the accountability and integrity of public authorities in regard to public procurement...”.

Support activities continue to focus on expert advice on policies, legislation and institutional structures and operations together with a range of training activities and awareness raising and public outreach activities and initiatives. The main beneficiary of the Project is the Ministry of Economic Development and Trade (MEDT).

Component 4 of the Project’s 2016/2017 Work Programme focuses on several inter-related aspects of awareness-raising in regard to public procurement. In particular, it has an emphasis on the importance of promoting a high degree of common understanding of the public procurement legislation and, in consequence, the importance of a unified approach to strategy and developments in the field of public procurement among main stakeholders.

In its work to date to promote transparency and awareness across the public procurement system, the Project has previously organised and facilitated a wide range of Roundtables and workshops for NGOs, procuring entities, control bodies and the business community between 2014 and 2016. These events were well attended and well received by the bodies and organisations concerned.

In line with overall planning and earlier work done on the establishment of professional communication between the main stakeholders in the public procurement sphere in Ukraine, one of the main priorities (Component 4.1.A) in the approved November 2016 to November 2017 Work Programme is the series of Awareness Raising Roundtables.

Building on the earlier results of these events, the new series of Roundtables is designed to bring together a range of (arguably opposite) positions and interests with a view to resolving key issues and promoting a better common understanding of the different roles and perspectives of distinct stakeholder groups in the public procurement system. Fundamentally, the idea behind this is to structure an honest communication between different procurement interests (that share the goal of attaining a transparent, effective, competitive and law based procurement system which achieves best “value for money”) in order to determine general and specific weak points in the legislation and practice and work towards the elaboration and implementation of relevant corrective efforts involving all of these stakeholder groups.

The first Public Procurement stakeholder awareness-raising Roundtable was held on 21 March 2017 and discussed different aspects of MEDT policy-making and regulatory activity. This second Public Procurement stakeholder awareness- raising Roundtable was organised by the Project to discuss various aspects of the operations of the Anti-Monopoly Committee of Ukraine in regard to public procurement. The Roundtable Programme is attached as
Annex 1.

The event was attended by 38 persons – among whom were representatives of the AMCU, the MEDT, State Enterprise Prozorro, the Kyiv School of Economics, the USAID/UK-Aid TAPAS project, business entities and public procurement professionals (invited from the dedicated Facebook group: “Union of public procurement reform”) and members of the Project Team. The list of participants is attached to this Report (Annex 6).
Opening the Roundtable, Mrs. Nina Sydorenko Deputy Head of the Anti-Monopoly Committee of Ukraine, welcomed all participants and expressed her gratitude to the Project for fruitful support for the Committee in regard to the harmonisation of legislation in the field of public procurement in Ukraine with EU Directives, under Ukraine’s commitment to advance integration with the global economy and greater adherence to international norms in line with the EU-Ukraine Association Agreement. Mrs. Sydorenko also thanked the Project for organising such an important Roundtable on awareness with the participation of all interested parties including representatives of NGOs who actively monitor the public procurement field. In addition, Mrs. Sydorenko noted that the AMCU is a State body with a special status, aimed at providing State protection of competition in entrepreneurial activity and in the field of public procurement. At the same time, the AMCU is the appeal authority for public procurement issues, a factor which makes this Roundtable of particular interest.

Project Team Leader, Dr Eugene Stuart, noted that Ukraine has progressed considerably in public procurement reforms since the beginning of the Project back in November 2013. The Project had commenced its activity in a situation which required reform of the public procurement system and harmonisation of the public procurement legislation with EU standards. Among the main areas of the Project’s focus are legislation and strategy, training and institution building, transparency and awareness raising.

Dr. Stuart mentioned that recent reforms in public procurement showed a twin-track approach involving the prioritisation of e-procurement via Prozorro and strong commitments to substantially implement further provisions of the EU Public Procurement Directives. Thus, it was necessary at this stage to try to converge these two sets of priorities. Accordingly, this year the Project is giving priority support to the preparation of new legislation (presentation of the new Edition of the Law on Public Procurement - PPL), the CPB pilot initiative and the overall agenda of professionalising the procurement system of Ukraine. In regard to the latter, a new on-line training public procurement course for the business community was launched and already nearly 3,000 people have enrolled with the PROMETHEUS education platform to pursue this course. Secondly, a further on-line training course on public procurement monitoring for civil society activists was launched on 1 June 2017. Thirdly, a major professionalization initiative towards the advancement of higher education in regard to public procurement was undertaken via a collaboration between the Kyiv School of Economics, the MEDT and international donors – including the Project. This envisages the advanced training of a number of officials as certified and designated public procurement trainers/educators and the inclusion of a public procurement element in the KSE Masters of Economics programme from this year. Fourthly, there is now a new PFM Strategy (Feb 2017) and Action Plan (May 2017) covering the period 2017 to 2020. In particular, this re-affirms the Public Procurement Reform Strategy/Road-Map (PPRS/RM) of February 2016 in regard to public procurement.

In regard to the AMCU role in the public procurement system, Dr. Stuart said that it was understood, but not confirmed, that staffing levels in the AMCU Complaints Review Department are to be increased in response to increased workload and a general
endorsement by the Government system (e.g. the Accounting Chamber) that the Complaints Review process is working well.

The PPRS/RM envisages several substantive changes in the complaints review system, and before end-2018, to align with EU rules. These concern the invalidation of awarded contracts, complaint time limits and standstill periods, the award of damages, procedural simplification for below (EU) threshold contracts and the liability of contracting authorities per se.

In regard to complaints procedures, the existing PPL includes rules that, on many points, correspond with the fairly general requirements of the EU Remedies Directives. However, there are several shortcomings. These include aspects of the standstill period, the possibility for the award of damages as a sanction in the event of successful complaints, the rights of the parties during a complaints procedure and the possible award of damages. Improving the procedural rules for complaints review also needs to address:

- The deadlines for submitting complaints (must be certain and be at least ten days from the date on which a complainant knew or ought to have known of the alleged infringement);
- The automatic rejection of a complaint due to (apparent) non-compliance with deadlines cannot be absolute - the deadline must be extended if the complainant did not actually have the information necessary to detect the infringement;
- It must be possible for a complainant to be awarded damages due to infringements, and for a contract to be declared ineffective/invalid in case of serious breaches which deprive complainants of the possibility to seek pre-contractual remedies (e.g. no competition is held or no standstill period is applied).

Dr. Stuart also said that this second Roundtable was aimed to discuss the AMCU’s role in the public procurement system with an emphasis on the complaints review process and the detection and sanctioning of bid-rigging in the public procurement system, specifically to update knowledge of the present operations of the Complaints review process in public procurement (including the increase of complaints, experience of the new electronic systems, the experience of practitioners), and to consider progress in the detection of bid-rigging in procurement and examine the intended steps under the PPRS/RM to further align the Complaints review process with EU standards – specifically aspects of the EU Remedies Directives. He expressed his hopes for a productive, open and frank discussion, which could possibly lead to identification of the need for further changes in the PPL or specific areas for improved practice.

**PART I Complaints Review**

*Mrs. Nina Sydorenko, Deputy Head of the Anti-Monopoly Committee of Ukraine* presented the current position of the AMCU regarding *Complaints review in the field of public procurement: statistics, successes and complications observed (Annex 2)*

She highlighted the specific status of the AMCU under the Law on the Antimonopoly Committee of Ukraine, according to which the AMCU is a State body with a special status whose purpose is to provide State protection of competition in entrepreneurial activity and in the field of public procurement.
The specific aspects of the special status of the AMCU are stipulated by its tasks and powers, including its role in shaping competition policy, and are determined by this Law, other acts of legislation, including the new PPL. In comparison to the old PPL which was in force before the newly adopted one in 2015 (№ 922-VIII) which entered into force for all procuring entities from August 1, 2016, the new PPL has several major differences:

1) everything in public procurement became transparent and open for access;

2) appeals should be substantiated; meaning that the subject of the appeal may examine in detail the documents of the proposals of other participants;

3) the subjects of appeal and procuring entities independently (on their own initiative) submit the relevant expert opinions to the appeal body;

4) the system automatically suspends the bid in the case of a complaint to the appeal body;

5) the system automatically blocks the ability of procuring entities to disclose proposals (when considering a complaint by the appeal body), which prevents violations that cannot be eliminated (cancellation of tenders).

Moreover, the deadline for reviewing a complaint is 15 business days. According to Article 6 of the Law on the Protection of Economic Competition, anti-competitive concerted actions are concerted actions, which caused or may lead to avoidance, elimination or restriction of competition.

Mrs. Sydorenko overviewed the following types and procedures for handling complaints:

1) On the discriminatory terms of the tender documentation;

2) On the actions / inactivity of the procuring entities during the preparation of tender offers (not providing explanations, etc.);

3) On the actions of the procuring entity regarding the disqualification of the participant;

4) For inconsistency of offers of other participants (admitted to the auction), mismatch of the proposal of the winner with the requirements of the documentation;

5) On the customer's inaction regarding failure to comply with the decision of the appeal body.

The procedure for reviewing complaints is foreseen by Article 18 of the PPL, and by regulations of the AMCU Board. In regard to major violations, the following are typical:

- Setting in the tender documentation requirements that only one particular participant (manufacturer or supplier) can satisfy (tender documentation is registered under one manufacturer / supplier).

- Mismatch of e-auctioned products and those recognised as the most economically advantageous tender bids for tender documentation terms.

- Unjustified rejection of tender offers of participants in procurement procedures.

- Discriminatory approaches to the consideration and evaluation of tender offers of participants in procurement procedures (rejection of offers by some participants as non-compliant with the terms of the documentation, and the approval of others which also do not comply with the terms of the documentation, to the auction and to determine the winners of the auctions).
- Non-compliance of the auction procedure as determined by the legislation.

The main types of decisions which the AMCU as appeal body can take are:

- the acceptance of a complaint for consideration or rejection without consideration (based on the compliance/non-compliance of the complaint with the requirements of the law);
- the termination of a proceeding where the complaint was withdrawn or the procuring entity has cancelled the procurement procedure;
- a finding that the terms of the documentation are discriminatory and requiring the procuring entity to make changes to the tender documentation;
- a finding that the actions of the procuring entity regarding the disqualification of the complainant is illegal and requiring the procuring entity to cancel its decision to reject the offer of the complainant;
- a finding that the proposal of the winner of a tender is inconsistent with the requirements of the tender documentation and requiring the procuring entity to cancel its decision on the choice of the winner;
- a finding of a discrepancy in the proposal of other participants (other than the complainant) admitted to the auction;
- a finding of a discrepancy in the requirements of the tender documentation and requiring the procuring entity to cancel its decision on admission to the auction;
- the abolition of the procurement procedure,
- the impossibility to correct the violations;
- a finding regarding a contracting authority’s failure to execute a decision of the appeal body and requiring such compliance;
- a finding that the complaint is unsubstantiated.

In addition Mrs. Sydorenko said that most mistakes made by the complainants can be classified into several typical faults: 1) Absence of payment for consideration of a complaint (to the State Budget of Ukraine); 2) Violation of time limits for filing complaints 3) Filing complaints in paper form; 4) Lack of confirmation of the position, justification of the violated rights (providing evidence). She added that the AMCU takes the position that the burden of proof is on a complainant who is supposed to provide necessary documents to justify his complaint.

On the quantity of complaints which AMCU receives annually, a recent analysis has shown that the quantity of complaints is growing significantly. In 2016, the AMCU received 3,067 complaints for review, while in 2015 the figure was 1,342 and in 2014 it was 930. With that Mrs. Sydorenko added that complaints had also generally grown in complexity.

Summarising the problems which the AMCU faces as an appeal body, Mrs. Sydorenko underlined the following points:

1) "Misuse of the law" of the complainant - a significant number of "technical" complaints and complainants complaining "to delay" procurement procedures (by the results of 2016 - 29%).
2) "Misuse of the right" of the procuring entity - no liability for non-compliance with the AMCU decision (the Board re-examines complaints and makes decisions on violations);

3) Unjustified cancellation of bidding after an auction (not contested for technical reasons).

4) An increase in the number of complaints, a reduction in the period of review (twice as compared with the previous law), the low cost of payment for filing a complaint (did not change since 2010, with the appreciation of the dollar three times, official statistics of the level of inflation - 100%).

5) The imperfection of the electronic system for accepting complaints (in the absence of payment, the time-barring system should automatically leave the complaint without consideration).

6) Lack of proper financing, staffing and material and technical basis (impossibility to realize the right of the parties to take part in collegium meetings "by using telecommunication systems in real-time interactive mode").

7) Providing parties with complaints of materials/explanations, etc. on the day of the meeting (complicates the consideration and analysis of materials).

8) Lack of operational clarifications by industry regulators, experts and specialists.

9) Technical problems in the work of the electronic procurement system.

Although, the AMCU is facing many different challenges in fulfilling its role as an appeal body, there are a number of positive achievements to be noted. First, and most important, is the growing trust in the body as capable of impartial and objective consideration of complaints and to protect the complainants' right to competition between the parties in the field of procurement. Secondly, the complaints review system has stabilized; notwithstanding work overload. Thirdly, the cancellation of AMCU complaints review decisions by the courts is low at less than 5%.

Mr. Steen Bruun-Nielsen, Senior Public Procurement Expert at the of EU funded Project “Harmonization of Public Procurement System in Ukraine to EU Standards”, continued with a presentation on Possible legislative development regarding the complaints review process in the context of the EU-Ukraine Association Agreement and practice (see Annex 3).

The presentation emphasised that the various proposals were neither official nor finalised at this stage. It was also pointed out that the EU Directives on Remedies are less detailed than the other EU Public Procurement Directives. This is intended to allow account to be taken of the specificities of national judicial systems.

The EU Remedies Directives set minimum national review standards to secure that rapid and effective means of corrections are available in all EU countries and focus on the following aspects:

1) requirement for an independent review and compliance authority;

2) sanctions to address unlawful decisions;

3) introduction of the standstill period following award to allow for;

4) possibility to allow complaints to have suspensive effect until the case is decided.
The existing rules of the current Ukrainian PPL are essentially compliant with the EU Remedies Directives. However, the following adjustments should be made to ensure full harmonisation:

- Introducing a uniform time limit of minimum 10 days for complaints since the existing rules of the PPL does not allow sufficient time during certain phases of the procurement process. This should be coupled with allowing exemption from the automatic e-rejection of late complaints in cases where the complainant can show that he could not possibly have complained earlier.

- Introducing a uniform 10 day standstill period, thus abolishing the existing five-day rule for certain utilities contracts (“the usual suspects”) since the directive does not allow such differences. However, it is at the same time suggested to explore existing flexibilities and allow five days in case of below EU threshold contracts and contracts awarded under framework agreements;

- Extension of the existing 15 day period for review procedures to 20 days (within the EU there are much longer time limits).

- Clarification of the possibility for damages as a sanction possible competence for AMCU; it should in any case be made clear by law that the normal courts have competence in these matters;

- The possibility of introducing the minimum requirements concerning ineffectiveness of unlawful contracts in extreme cases (contracts awarded without any procedure or contracts signed within the standstill period) has been raised. The essential difference would be that ineffectiveness could be designed to have effect only for the future and that this would be a useful alternative in cases where the contract is only challenged after it has been in force for a while. However, the existing rules do fulfill the requirements of the Remedies directive and the introduction if inefficiency might require significant changes in not just the PPL.

Discussion:

Mr. Oleksandr Shatkovskiy, Deputy Team Leader of the EU funded Project “Harmonisation of Public Procurement System in Ukraine to EU Standards”, invited representatives of the MEDT, the AMCU, and other stakeholders to comment on the appeal issues presented by Mrs. Sydorenko and Mr. Bruun-Nielsen.

Dr. Eugene Stuart started the discussion asking what is the proportion of complaints rejected due to the non-payment of the fee for submission of complaints?. Mrs. Sydorenko answered that AMCU believes that such rejection is mostly justified by technical reasons/mistakes and is quite small but in any case there are no statistics on this point.

Mr. Oleksandr Brodskiy, business representative, asked Mrs. Sydorenko for her opinion the issue of fees for the submission of complaints and whether this was related to the overload at AMCU and its financial situation, when in any case the payments of these fees go directly to the State budget. Would an increase in the level of fees change or resolve problems of overload and human resources at AMCU. Mrs. Sydorenko replied that internal problems would not be resolved, as the AMCU is a budget body, and the fees paid for the complaints review go directly to the budget accounts.

Mr. Bordskiy also asked if the AMCU has the right of legislative initiative in order to initiate legislative changes. Mrs. Sydorenko advised that the AMCU does not have the right of
legislative initiative and acts according to corresponding legislation, although the AMCU has the right to participate in discussions of legislative amendments which are proposed and in working groups in order to inform their position.

**Mr. Brodskiy** continued his questions and asked about situations when a concerned tender participant is appealing in regard to a procuring entity which suddenly found a reason and decided to cancel the procedure, and at the end the complainant is deprived of any reimbursement of the money spent to submit the appeal. **Mrs. Sydorenko** answered that the AMCU stands for the protection of competition, and according to present laws which regulate the AMCU’s activity, each complaint should be reasonable and justified, and cases when by complaints about tender procedures are intended to be extended exist too, and AMCU knows which of them are for which reason. The work needed to study and review a complaint is considerable and the present fee level is justified. Moreover, the issue of reimbursement of the fee in full or partially is being actively discussed, including the issue of the AMCU position on narrowing the right of appeal to the AMCU (only for participants in tenders).

**Mr. Shatkovskiy** asked for a general view from the Roundtable for or against the full or partial return of the fee when the procedure cancelled by the procuring entity and this was generally not supported by participants.

**Mr. Nick Smirnov**, lawyer-expert of Facebook Community “Public Procurement Reformers”, said that, even though Article 18 of the new PPL exists, the problem belongs to the whole IT system due to the fact that there is no such button to push, there is no such possibility to complain against a decision of the procuring entity to cancel a procedure. For the participant it is important, where there might be Appeal Court decisions and this raises the question of how a participant can demand reimbursement. **Mrs. Sydorenko** commented that the appeal body draws attention to the need for the subjects to comply with the requirements of the PPL, and the filing of appeals is regulated by Article 18 of the PPL, which says that the complainant is obliged to provide grounds on which the complaint is filed, references to violation of the procurement procedure or decisions taken, actions or omissions of the procuring entity, factual circumstances that can confirm this, the date on which the subject of the appeal became aware of such decisions, actions or inactivity; requirements of the subject of appeal and their substantiation; and documents (if any) confirming the violation of the procurement procedure or the unlawfulness of the decisions, actions or inaction of the customer. She said that it was important to remember that complaints regarding decisions, actions or inactivity of the procuring entity that have occurred after evaluation of the proposals of the participants must be filed within 10 days from the day the notice was announced on the web portal of the Authorised Agency about the intention to conclude the contract, but before the day of the conclusion of the procurement contract.

**Mr. Smirnov** continued the discussion as to the case when procuring procedures are cancelled by entities, mentioning part 5 of the article 18 of the PPL which includes the following wording: “The body of appeal shall approve a decision the termination of consideration of a complaint in the event that: ... procuring entity taken a decision to cancel the bidding or to declare it to be unfulfilled, to cancel the negotiated procedure, except in case of appeal of any of these decisions”. He pointed out that there is already a court decision in such cases, when the decision of AMCU to terminate consideration of a complaint in such case is being cancelled, but then there is a question to think on how such court decisions would be carried out and who will be responsible for fulfillment of such, as
there is another liability out of non-fulfillment of the court decisions which is criminal liability.

**Mrs. Inna Memetova** (representative of Kyiv School of Economics) asked about repeated complaints on the same subject and in regard to the same procuring entities and the situation of different decisions approved by the AMCU. **Mrs. Sydorenko** commented that decisions on the same subject of complaint can be of course different if the proof base is different. **Mr. Bruun-Nielsen** added that, in EU Member States, the public procurement sphere is not monitored, and the issue of liability rests in the hands of authorities and in case of repeated complaints the problem belongs to the head of such institution.

There was a short discussion between experts of the Facebook communities on public procurement concerning case law and the possibility to use decisions of courts in Ukraine, as Ukraine is not a case law country. **Mr. Bruun-Nielsen** noted that Denmark, for example, does not have the same legal system as in the UK but still looks at the decisions of courts. **Mrs. Sydorenko** added that there is annual statistical report produced by the AMCU annually on the typical decisions which were taken by the complaints review body.

**Mrs. Yaroslava Dubrova**, procurement expert, asked the AMCU about the idea to generalize AMCU case law on public procurement similar to interpretation guidelines issued by the Supreme Court. **Mrs. Sydorenko** noted the limited human resources of the AMCU but supported this idea and undertook to consider the idea of guidelines.

**Mr. Ivan Lakhtionov** (Transparency International Ukraine) asked the AMCU if it is possible to publish such information in a machine readable electronic format, as it is much easier to scan and publish hundreds of decisions, and moreover if would facilitate the possibility to integrate such information with the Prozorro system. **Mr. Shatkovskiy** commented that AMCU could request assistance for this e.g. from the EBRD and that progress on this would really significantly assist everybody.

Ms. Oksana Koltyk, Head of Internal Audit Department of Kyiv City Administration, asked how the execution and enforcement of AMCU decisions could be monitored in order to ensure compliance. **Mrs. Sydorenko** replied that such monitoring is not a role for the AMCU, but she agreed that such monitoring is important and useful. **Mr. Brodskiy and Mr. Yevgen Kostenko** shared the view that such monitoring could be performed by the State Audit Service in the context of the future comprehensive monitoring envisaged by the Draft Law No. 4561. Ms. **Yaroslava Dubrova** doubted the practical efficiency of such monitoring in the absence of liability for non-fulfillment of AMCU decisions. Accordingly, it might be useful to amend the Code of Administrative Offences to introduce such specific liability.

**PART II – Bid-Rigging**

**Mr. Vlad Udovichneko**, Head of the AMCU Division on the investigation of certain types of anti-competitive concerted actions made a presentation on The current position regarding the detection of bid-rigging in the public procurement sphere: statistics, successes and complications observed (see Annex 4), where he pointed out the following:
State control in the field of procurement is being carried with accordance with Article 6 of the Law on the protection of economic competition in accordance with which a) anti-competitive concerted actions are concerted actions, which caused or may lead to avoidance, elimination or restriction of competition and; b) anti-competitive concerted actions, in particular, are recognized as concerted actions concerning the distortion of auction results, auctions and tenders.

The consequences for violators are the imposition of a fine of up to 10% of turnover for the previous year and exclusion from participating in public procurement for 3 years.

Mr. Udovichenko said that there were 410 cases in 2016 resulting in the imposition of 297,175 MLN UAH in fines on economic entities. In the first quarter of 2017, the general numbers have increased.

As the identification of concerted actions is one of the main functions of the AMCU, the AMCU receives many of requests and complaints - from members of Parliament, from the public and from individuals. Important recent cases included

- a case involving the distortion of auction results for the purchase by the Ukrainian State enterprise of postal communication "Ukrposhta";
- the imposition of a fine of 40,592 UAH in the Electronic Cash registers procurement;
- the distortion of the results of auctions for the procurement of roads and related infrastructure by the Office of Housing and Communal Services of the city of Rivne;
- the procurement of paints and varnishes based on polymers by the State enterprise "International airport" Boryspil", resulting in a fine of 669,000 UAH.

The detection of conspiracies has a preventive effect. Moreover, Resolution of the Plenum of the Supreme Economic Council №15 of 26 December 2011 "On some issues of the practice of the application of competition law" clarifies that collusion need not involve market dominance or the monopoly of an entity and that actual harm does not need to be proven by the AMCU.

Signs of similarity in actions (or inactivity) of business entities are not the only sufficient proof of the existence of a preliminary conspiracy according to this Resolution. The conclusion of the AMCU that there are no objective reasons for a business entity to commit similar actions (inaction) is indeed based on the results of the study of the whole set of factors. Usually the presence of identical errors and common features in the execution of tender documents gives reason to believe that there was an exchange of information between the participants in the procurement procedure in order to secure the tender for one of the participants.

In regard to problematic issues concerning collusion and bid-rigging in public procurement, Mr. Udovichenko pointed to the following:

- Delaying of court cases;
- Liquidation, reorganisation, bankruptcy of defendants on which an investigation is being conducted or where a decision to impose a fine has already been taken;
- Sale of assets of enterprises for which a decision was made to impose a fine;
- Participants of the so called "empty" companies;
Non-submission of information by authorities and a separate group of legal and natural persons (even though the AMCU has the right to demand any information regardless of the mode of access to it according to the existing legislation. (Liability for not submitting information by authorities is not provided by legislation).

He also noted that the AMCU does not have appropriate specialised hardware and software that would allow copying and restoring deleted information on the computers of suspected firms. In addition, the procedures for video and audio surveillance of illegal actions of business officials, aimed at creating obstacles to the verification are not regulated, and in fact there are no means for such surveillance. Moreover, the procedure to involve citizens as witnesses concerning illegal business actions is also not regulated.

Mr. Oleksandr Shatkovskiy, Deputy Team Leader and Senior Public Procurement Expert, EU funded Project “Harmonization of Public Procurement System in Ukraine to EU Standards” made a presentation on possible measures for strengthening capacities for the detection of bid-rigging (see Annex 5). This covered the concept of bid rigging, where bid-rigging activities are sometimes also linked with corruption issues; where either the contracting authority or a member of the Tender Committee would assist two or more tender participants to organise a bid-rigging activity for the purpose of obtaining extra profit without competition. He stressed that these issues must be assessed separately as a “vertical” event, often falling under criminal law, rather than under competition law, which is defined to be a “horizontal” anti-competitive behavior. Thus, bid-rigging does not deal with corruption issues or any other conspiracy between tender participants and the contracting authority but is to be understood as agreed joint anti-competitive actions between economic operators. The most common forms were: bid suppression, complementary bidding, bid rotation/rotation of “lucky” winners, territorial market division, and sub-contracting as an award for limitation of competition at tender.

Mr. Shatkovskiy referred to a check list approach of foreign authorities as an example of best practice on this issue (checklist of the Swedish Competition Authority to Detect Bid-rigging, OECD guidelines, US recommendations). He then presented a short list of recommendations to the AMCU: in regard to indirect actions to increase public awareness, to improve the leniency programme; to increase AMCU staff on bid-rigging; to check suspicious indicators, to install long term computer based monitoring. Mr. Shatkovskiy noted that all of these recommendations are basically normal requirements, needed by the AMCU for the fulfillment of their daily activity in regard to its legal functions and that assistance from international donors could support these reforms.

**PART III General Discussion**

Mrs. Natalya Shymko, Deputy Head of the Department of Public Procurement Regulation of the MEDT invited all stakeholders to share their viewpoints and to continue general discussion as per agenda of the Roundtable. She referred to the topic of monitoring discussed previously and noted that the MEDT is working to progressively improve the law e.g. the MEDT drafted amendments to the PPL, and other corresponding legislation, and is participating in the discussions in regards of different Draft Laws (the Draft Law on Monitoring is actively discussed by corresponding responsible bodies), as well as a series of other Draft Laws which have articles in regard to public procurement. Substantial new
legislation is expected to be approved in the autumn. She also pointed out that it would be possible to resolve a key issue in the complaints system (non-fulfillment of the AMCU decisions) if a database was created. She asked representatives of the National Anti-Corruption Bureau to reflect on the issue and on what kind of liability should be applied for non-compliance with AMCU decisions.

Mr. Maksym Kovbasenko of the National Anti-Corruption Bureau, raised a question as to which facts could be considered as indicators of collusion among legal entities. Mr. Udovichenko said that legal entities should have close economic relations (eg. Cash registers registered at the same register, mutual transfer of funds for a guarantee fee), but exactly defined criteria as to such dos not exist, it depends on the facts of each case.

Mr. Smirnov emphasised the need to increase the quantity of the AMCU personnel for the complaints department), but at the same time underlined the impossibility for NGOs representatives to monitor or help, due to the exact wording of Article 18 which straightforwardly indicates that a person who submits a complaint is supposed to substantiate the statement of complaint, and in accordance with the wording of this article, NGOs have no legal standing. Mrs. Olena Shcherban from NGO Centre for Prevention of Corruption underlined that even now, with 6 staff members, the bid rigging division of AMCU is doing a good job.

There was a short discussion among participants in regard to the doubtful expediency of establishing a black list in the field of public procurement. Ideas were exchanged on how to achieve this and how to monitor physical persons who already run a non-compliant company and then announce deliberate bankruptcy while creating another company to participate in new tenders. The possibility of establishing an electronic system for this was also raised.

Mr. Smirnov also asked Mrs. Shymko about the potential to delete the limitation of a minimum of 2 bids in order to recognise a procurement procedure as valid. Mrs. Shymko replied that idea will be tested for below-threshold contracts and agreed with comments of Mr. Udovichenko that the abolition of such a restriction creates risks for competition. Accordingly, advanced analytical research could be useful to find out the exact reasons why economic operators do not participate in public tenders. Mr. Zhluktenko, procurement expert, added that the Georgian law and system allows for a valid procedure if only 1 bid is submitted and that this arises in more than 50 % of tenders.

Mrs. Olena Shcherban asked Mr. Udovichenko if the new e-procurement system eased AMCU work on bid-rigging detection. He confirmed that it was helpful because of more advanced access to almost all procurement data. Mrs. Tetyana Rudenko proposed that the automatisation of information where an economic operator is or is not listed in the list of companies that were discovered as participants of anti-competitive actions (collusions) should be considered.

Mr. Smirnov referred to the draft law presented by Mrs. Shymko and asked which institution is proposed to play the role of review body for below-threshold contracts. Mrs. Shymko answered that it is quite a debatable issue, as for now – it is the concerned procuring entity itself.

Ms. Olga Tereshchenko from Kyiv School of Economics mentioned that KSE has just finished research on below-threshold procurements that showed that around 50 % of all contracts belong to this category. This might indicate an artificial intentional division of contracts into
smaller parts to avoid mandatory tender procedures. She also asked the representative of SOE Prozorro if the IT system is capable of dealing with the situation when auctions for below-thresholds contracts will become mandatory. Oleksandr Vinnitskiy, Deputy Director of SOE Prozorro, answered that the IT system is ready and it has at 3 times more capacity than it is currently using.

**Mr. Smirnov** raised one more issue about entities that are not covered by the PPL but which use Prozorro for their own procurements (like UkrGazVydobuvannya or regional oblast energy companies). This situation also brings unnecessary complications for economic operators participating in such tenders and often surprises them when their complaint to the AMCU (with paid fee) is rejected because the procuring entity and its tender were not covered by the Law. **Mrs Shymko** replied that draft amendments to the PPL will expand its scope to cover UkrGazVydobuvannya or regional oblast energy companies that will solve problem but the need for attention in reading tender documents with relevant information is also important for economic operators.

**Mr. Zhlukenko** said that the serious growth of complaints seems to be a negative trend in the public procurement system and suggested a need for a deep analysis of the reasons and pre-conditions of this growth.

**Summarising** the discussion and closing the Roundtable, **Mr. Shatkovskiy** together with other participants expressed their joint opinion that the event was not only interesting for everyone but also useful in generating further thoughts and actions to work on amendments to the legislation and to develop the national public procurement system to make it more efficient as well as compliant with EU standards.
Annex 1: Roundtable Programme

Annex 2: Presentation of Mrs. Nina Sydorenko
Deputy Head of Antimonopoly Committee of Ukraine

Annex 3: Presentation of Mr. Steen Bruun-Nielsen,
Senior Expert of EU funded Project “Harmonisation of Public
Procurement System in Ukraine with EU Standards”

Annex 4: Presentation of Mr. Vlad Udovichneko,
Head of Division of the Antimonopoly Committee of Ukraine

Annex 5: Presentation of Mr. Oleksandr Shatkovskiy,
Deputy Team Leader, EU funded Project “Harmonisation of
Public Procurement System in Ukraine with EU Standards”

Annex 6: List of Participants.
ANNEX 1: Roundtable Programme

Second Public Procurement stakeholder awareness-raising Roundtable

PROGRAMME

Date: 7 July 2017

Venue: Kyiv, “Opera” Hotel.

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>09.00 – 09.30</td>
<td>Registration</td>
</tr>
<tr>
<td>09.30 – 09.45</td>
<td>Welcome and introduction to the workshop</td>
</tr>
<tr>
<td></td>
<td>Mrs. Nina Sidorenko</td>
</tr>
<tr>
<td></td>
<td>Deputy Head of Antimonopoly Committee of Ukraine</td>
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<tr>
<td></td>
<td>Dr Eugene Stuart, Team Leader, EU funded Project “Harmonisation of Public</td>
</tr>
<tr>
<td></td>
<td>Procurement System in Ukraine to EU Standards”</td>
</tr>
<tr>
<td></td>
<td>Mr. Boris Filipov, Attaché, Sector manager, EU Delegation to Ukraine.</td>
</tr>
<tr>
<td>09.45 – 11.15</td>
<td>SESSION 1 – Complaints review</td>
</tr>
<tr>
<td>09.45 – 10.45</td>
<td>Current position regarding complaints review in the public procurement</td>
</tr>
<tr>
<td></td>
<td>sphere: statistics, successes and complications observed</td>
</tr>
<tr>
<td></td>
<td>Mrs. Nina Sydorenko</td>
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<tr>
<td></td>
<td>Deputy Head of Antimonopoly Committee of Ukraine</td>
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<td></td>
<td>Possible legislative development regarding the complaints review process</td>
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<td></td>
<td>in the context of the EU-Ukraine Association Agreement and practice</td>
</tr>
<tr>
<td></td>
<td>Mr. Steen Bruun-Nielsen, Senior Expert of EU funded Project “Harmonisation</td>
</tr>
<tr>
<td></td>
<td>of Public Procurement System in Ukraine to EU Standards”.</td>
</tr>
<tr>
<td>10.45-11.15</td>
<td>Discussion</td>
</tr>
<tr>
<td></td>
<td>Moderator: Mr. Oleksandr Shatkovskiy, Deputy Team Leader and Senior</td>
</tr>
<tr>
<td></td>
<td>Public Procurement Expert, EU funded Project “Harmonisation of Public</td>
</tr>
<tr>
<td></td>
<td>Procurement System in Ukraine to EU Standards”.</td>
</tr>
<tr>
<td>11.15 – 11.45</td>
<td>Coffee break</td>
</tr>
<tr>
<td>Time</td>
<td>Session Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>11.45 – 13.15</td>
<td><strong>SESSION 2 – Collusive bids</strong></td>
</tr>
<tr>
<td>11.45 – 12.45</td>
<td><strong>Current position regarding the detection of bid-rigging in the public procurement sphere: statistics, successes and complications observed</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Mr. Vlad Udovychneko, Head of Division of the Antimonopoly Committee of Ukraine.</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Possible measures for strengthening capacities for the detection of bid-rigging</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Mr. Oleksandr Shatkovskiy, Deputy Team Leader and Senior Public Procurement Expert, EU funded Project “Harmonisation of Public Procurement System in Ukraine to EU Standards”.</strong></td>
</tr>
<tr>
<td>12.45 – 13.15</td>
<td><strong>Discussion</strong></td>
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<tr>
<td></td>
<td><strong>Moderator: Mr. Oleksandr Shatkovskiy, Deputy Team Leader and Senior Public Procurement Expert, EU funded Project “Harmonisation of Public Procurement System in Ukraine to EU Standards”.</strong></td>
</tr>
<tr>
<td>13.15 – 14.00</td>
<td><strong>Lunch</strong></td>
</tr>
<tr>
<td>14.00 – 15.30</td>
<td><strong>SESSION 3 - Stakeholder viewpoints and general discussion</strong></td>
</tr>
<tr>
<td>14.00 – 15.30</td>
<td><strong>Stakeholder viewpoints and general discussion</strong></td>
</tr>
<tr>
<td></td>
<td>- <strong>Natalya Shymko, Deputy Head of Public Procurement Regulation Department of MEDT</strong></td>
</tr>
<tr>
<td></td>
<td>- <strong>Round-table participants</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Moderator: Mr. Oleksandr Shatkovskiy, Deputy Team Leader and Senior Public Procurement Expert, EU funded Project “Harmonisation of Public Procurement System in Ukraine to EU Standards”.</strong></td>
</tr>
<tr>
<td>15.30 – 16.00</td>
<td><strong>Roundtable Conclusions</strong></td>
</tr>
</tbody>
</table>

*Interpretation: Simultaneous*
ANNEX 2 Presentation of Mrs. Nina Sydorenko
Deputy Head of Antimonopoly Committee of Ukraine

PUBLIC PROCUREMENT AND COMPLAINT REVIEW SYSTEM

Statistics, Achievements and Challenges

N. S. Sydorenko
Deputy Chairman of the AMCU
State Commissioner

7 July 2017

AMCU — Complaint Review Authority in the public procurement sector

- Public authority with a special status in charge of protection of competition in business and in the public procurement sector on the part of the State

- Complaint Review Authority in the public procurement sector (the Permanent Administrative Board of the Antimonopoly Committee of Ukraine for handling complaints against violation of the public procurement law is composed of three State Commissioners of the Committee)
Legal and regulatory framework

The Law of Ukraine “On the Antimonopoly Committee of Ukraine” of No. 3659_XII of 26 November 1993, as amended

The Law of Ukraine “On Public Procurement” No. 922-VIII of 25 December 2015 (as amended) came into force for all contracting entities on 01 August 2016 and replaced the Law of Ukraine “On Public Procurement” No. 2289-VI of 01 June 2010 (as amended)

Key differences between the two Laws

<table>
<thead>
<tr>
<th></th>
<th>The Law of Ukraine No. 2289.VI</th>
<th>The Law of Ukraine No. 922.VIII</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Tenderers have no free access to tenders of other tenderers</td>
<td>All tenderers can be accessed freely, and everyone can view them</td>
</tr>
<tr>
<td>2.</td>
<td>Complainant may not know about particular weaknesses (inconsistencies) of tenders submitted by other tenderers</td>
<td>Complainant may thoroughly examine documents included in the tenders of other tenderers and clearly indicate any inconsistencies detected in them (complaints must be properly reasoned)</td>
</tr>
</tbody>
</table>
### Key differences between the two Laws (continued)

<table>
<thead>
<tr>
<th></th>
<th>The Law of Ukraine No. 2299-VI</th>
<th>The Law of Ukraine No. 922-VIII</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>Complaint Review Authority requests procurement information from contracting entities, tenderers, expert institutions and other entities</td>
<td>Complainants and contracting entities provide relevant expert opinions to the Complaint Review Authority voluntarily (at their own initiative)</td>
</tr>
<tr>
<td>4.</td>
<td>Complaint Review Authority decides on suspension of the procurement procedure where necessary</td>
<td>The system automatically suspends the procurement procedure as soon as a complaint as filed with the Complaint Review Authority</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>The Law of Ukraine No. 2289-VI</th>
<th>The Law of Ukraine No. 922-VIII</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>Contracting entities may, without complying with the decision of the Complaint Review Authority, open tenders (thus committing a violation that cannot be remedied which results in cancellation of the procurement procedure)</td>
<td>The system automatically blocks the option of tender opening for the contracting entity (for the period of complaint review by the Complaint Review Authority) which prevents a violation that cannot be remedied (no need to cancel the procurement procedure)</td>
</tr>
<tr>
<td>6.</td>
<td>The complaint review term is 30 business days</td>
<td>The complaint review term is 15 business days</td>
</tr>
</tbody>
</table>
Types of complaints and complaint review procedure

Types of complaints

- against discriminating conditions in the tender documents
- against actions/omission of the contracting entity during the period of preparation of tenders by tenderers (failure to provide explanations etc.)
- against actions of the contracting entity resulting in discrimination of the tenderer
- against non-compliance of tenders submitted by other tenderers (eligible for auction), non-compliance of the successful tenderer’s tender with the requirements of the documentation
- against omission of the contracting entity resulting in non-compliance with the decision of the Complaint Review Authority

Complaint review procedure

- Article 18 of the Law of Ukraine “On Public Procurement”
- Regulations of the Board

Key violations detected by the AMCU

- setting requirements in the tender documents that can be complied with only by a particular tenderer (manufacturer or supplier) (tender documents favour one manufacturer/supplier only)
- non-compliance of tenders accepted for auction (“EU procurement procedure”) and recognized as most economically advantageous with the terms and conditions laid down in the tender documents
- unlawful rejection of tenders
- discriminating approach to examination and evaluation of tenders (rejection of tenders of certain tenderers as such that do not meet the requirements set in the tender documents, while acceptance of others that do not meet such requirements either for auction and award)
- non-compliance with the rules of holding procurement procedures established by law
Types of decisions of the Complaint Review Authority

- on acceptance of the complaint for review/rejecting the complaint (depending on whether such complaint meets the requirements of law)

- on termination of the complaint review procedure (if the complaint was withdrawn by the complainant or if the contracting entity cancelled the procurement procedure)

- on recognizing the terms and conditions laid down in the tender documents as discriminating, and binding the contracting entity to make changes in the tender documents

- on recognizing the contracting entity's actions resulting in disqualification of the complainant as unlawful, and binding the contracting entity to cancel its decision on rejecting the tender of the complainant

- on recognizing the tender of the successful tenderer as non-compliant with the requirements of the tender documents, and binding the contracting entity to cancel its decision on tender award

Types of decisions of the Complaint Review Authority (continued)

- on recognizing tenders submitted by other tenderers, except for the complainant, and accepted for auction as such that do not meet the requirements set in the tender documents, and binding the contracting entity to cancel its decision on accepting such tenders for auction (EU procurement procedure)

- on cancelling the procurement procedure where the committed violations cannot be remedied

- on recognizing omission by the contracting entity resulting in non-compliance with the decision of the Complaint Review Authority, and binding the contracting entity to comply with such decision

- on recognizing the arguments of the complainant as unreasoned, and dismissing the complaint

- on rectifying misprints, etc.
Typical errors made by complainants in filing a complaint

- failure to pay the filing fee (to the State Budget of Ukraine)
- failure to file a complaint in a timely manner
- filing a complaint in a paper form
- failure to provide arguments or reason the violation of rights (lack of evidence)

“Myths” about the AMCU’s competence as the Complaint Review Authority

- sets specific requirements to be laid down in the tender documents and specifies the estimated cost of the procurement item
- selects the successful tenderer
- binds to award a procurement contract
- controls and verifies the whole procurement procedure to make sure it complies with the requirements of law (and not only reviews complaints)
- establishes that the information and documents submitted by tenderers are not faithful
- detects corruption offences
- establishes that the actions of tenderers are qualified as anti-competitive concerted actions (in fact, it only conducts specific proceedings within the framework of the complaint review process and consideration of cases on violations)
HARMONISATION OF PUBLIC PROCUREMENT SYSTEM IN UKRAINE WITH EU STANDARDS

Activities of the Complaint Review Authority under the “old” and “new” public procurement laws in figures

Number of filed complaints per 1 employee

Structure of the adopted decisions

Comparative complaint review statistics under the “old” and “new” public procurement laws

<table>
<thead>
<tr>
<th></th>
<th>Public procurement 01.01.2016 through 31.05.2016</th>
<th>Public procurement 01.01.2017 through 31.05.2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filed complaints, total</td>
<td>698</td>
<td>2,200</td>
</tr>
<tr>
<td>Filing fee paid</td>
<td>659</td>
<td>1,585</td>
</tr>
<tr>
<td>Meetings held</td>
<td>102</td>
<td>107</td>
</tr>
<tr>
<td>Decisions adopted</td>
<td>1,140</td>
<td>3,478</td>
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</table>
### Comparative complaint review statistics under the “old” and “new” public procurement laws (continued)

<table>
<thead>
<tr>
<th></th>
<th>Public procurement 01.01.2016 through 31.05.2016</th>
<th>Public procurement 01.01.2017 through 31.05.2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of which on:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>accepting the complaint for review</td>
<td>453</td>
<td>1,329</td>
</tr>
<tr>
<td>dismissal of the complaint</td>
<td>109</td>
<td>376</td>
</tr>
<tr>
<td>sustaining the complaint fully</td>
<td>31</td>
<td>41</td>
</tr>
<tr>
<td>sustaining the complaint partially</td>
<td>205</td>
<td>665</td>
</tr>
</tbody>
</table>

### Comparative complaint review statistics under the “old” and “new” public procurement laws (continued)

<table>
<thead>
<tr>
<th></th>
<th>Public procurement 01.01.2016 through 31.05.2016</th>
<th>Public procurement 01.01.2017 through 31.05.2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>rejecting the complaint</td>
<td>219</td>
<td>694</td>
</tr>
<tr>
<td>termination of the complaint review</td>
<td>113</td>
<td>356</td>
</tr>
<tr>
<td>Total amount of paid filing fees (thousand UAH)</td>
<td>3,660.00</td>
<td>8,450.00</td>
</tr>
</tbody>
</table>
Appeals against the AMCU decisions in court

Decisions of the AMCU as the Complaint Review Authority
- come into force on the date of their adoption
- are binding on the contracting entities
- may be appealed by complainants, contracting entities in court within 30 days of the date of their publishing in the e-procurement system

In 2016, 47 decisions in the public procurement sector were appealed in court, none was cancelled.

In 2017, 18 decisions were appealed in court, of which one was cancelled by court of the first instance (the AMCU has appealed this decision).

Challenges for the AMCU as the Complaint Review Authority

- Abuse of the complainant’s right — a lot of “technical” complaints and complainants that file complaints with the view to delay the procurement procedure (29% in 2016).

- Abuse of the contracting entity’s right — lack of responsibility for the failure to comply with the AMCU decision (the Board once again reviews complaints and adopts decisions on the violations), unreasoned cancellation of procurement procedures after the auction (not subject to complaining for technical reasons).

- More complaints, shorter terms for their review (twice as short compared to the previous law), low filing fee (the same as in 2010 though the USD exchange rate tripled, and the official inflation rate is 100%).
Challenges for the AMCU as the Complaint Review Authority

- Imperfect e-complaint system (where no payment was received or where the terms were delayed the system automatically rejects the complaint)

- Lack of sufficient funding, human resources and material (the parties cannot exercise their right to participate in the meetings of the Board by using an online telecommunication system in real time)

- Provision of materials/explanations by the parties to the complaint on the day of the Board’s meeting (this complicates the examination and analysis of the materials)

- Lack of quick explanations by sector regulators, experts and specialists

- Technical problems relating to the operation of the e-procurement system

Achievements of the AMCU as the Complaint Review Authority

- Better trust to the AMCU as the authority capable of unbiased and objective review of complaints, protection of the complainants’ right to competition among tenderers

- Stable activities of the Complaint Review Authority even under conditions of overloads/time pressure (sharp increase in the number of complaints, limited funding, unstable operation of the e-procurement system etc.)

- Efficient practices of the Board based on mostly sustainable approaches

- Low rate of decisions cancelled by court (around 6%)
Thank you!
ANNEX 3: Presentation of Mr. Steen Bruun-Nielsen, Senior Expert of EU funded Project “Harmonisation of Public Procurement System in Ukraine to EU Standards”.

HARMONISATION OF PUBLIC PROCUREMENT SYSTEM IN UKRAINE WITH EU STANDARDS

ГАРМОНІЗАЦІЯ СИСТЕМИ ДЕРЖАВНИХ ЗАКУПІВЕЛЬ В УКРАЇНІ З Є СТАНДАРТАМИ ЄС

www.eupublicprocurement.org.ua

Project funded by the European Union and implemented by a consortium led by Crown Agents Ltd.

Ideas for revision of Remedies Rules in PPL

7 July 2017

Steen Bruun-Nielsen
Senior Public Procurement Expert
Remedies

Remedies rules in existing PPL basically EU compliant

...............HOWEVER, some adjustments required

• procedural aspects
• some issues of principle

Time limits for complaints

• reduction of “types” of complaints
• uniform 10 day limit
• “knew or ought to have known”
• “almost” automatic e-rejection
Standstill

Reduction of cases where 5-day limit is allowed
(below threshold bids and contracts under framework agreements)

~ 10 day limit as of award notice is the main rule

Procedural Issues

• Right of parties in addition to merely be present during review of complaint

• Extension of 15 day time limit to 20 days
Damages and contracts

• damages as sanction required by the directives
  – by whom (AMCU/courts)?
  – any need for other legislative changes?

• ineffectiveness as alternative remedy to invalidity?

Thank you........

Questions or comments ???

steen.bruun-nielsen@ua.crownagents.com
Article 6 of the Law of Ukraine “On Protection of Economic Competition”

1. “Anticompetitive concerted actions are concerted actions that caused or may cause prevention, removal or restriction of competition.”

2. “In particular, anticompetitive concerted actions are concerted actions related to bid rigging in procurement procedure, auctions, contests, tenders.”
Key implications for offenders:

1. Imposing a fine in the amount of up to 10% of income (proceeds) from the marketing of products (supplies, works, services) for the reporting year preceding the year in which such fine is imposed.

2. Prohibiting participation in public procurements during a three-year period

Statistics:

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>Q1 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of detected violations</td>
<td>283</td>
<td>24</td>
</tr>
<tr>
<td>by the AMCU</td>
<td>14</td>
<td>5</td>
</tr>
<tr>
<td>Number of petitions, claims</td>
<td>410</td>
<td>47</td>
</tr>
<tr>
<td>(only central office)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of imposed fines</td>
<td>UAH 297.175 mln</td>
<td>UAH 1,371.668 mln</td>
</tr>
<tr>
<td>by the AMCU</td>
<td>UAH 54.767 mln</td>
<td>UAH 1,371.352 mln*</td>
</tr>
</tbody>
</table>

* fines for violations relating to marketing of oil and gas condensate via auction
Consolidated information about decisions of the AMCU bodies on establishing events of anticompetitive concerted actions in public procurements

- 1,143 procurement items
- 797 economic operators
- 413 decisions

DEFENDANTS:
Prok 84 LLC, Industrial Development LLC

Infringement

Infringement provided for by Article 6(2)(4), Article 50(1) of the Law of Ukraine “On Protection of Economic Competition” in the form of anticompetitive concerted actions related to bid rigging in the procurement procedure with the ID code ДК016.2010 – 15.20.1 Footwear other than sports, protective and orthopaedic footwear [announcement No. 210588 of planned procurement published in the Public Procurement Bulletin No. 97/1 (840/1) on 09 December 2013] held by the Ministry of Defence of Ukraine.

Fine: UAH 1,557 thousand
DEFENDANTS:
LEGION Security Agency LLC,
ENERGY SECURITY-COMPLEX LLC

Infringement

Infringement provided for by Article 6(2)(4), Article 50(1) of the Law of Ukraine “On Protection of Economic Competition” in the form of anticompetitive concerted actions related to bid rigging in the following procurement procedures:
- Procurement of private security-related services (security services for Dnipropetrovsk Regional Unit, Odessa Regional Unit and Kharkiv Regional Unit) by the State Air Traffic Service Enterprise of Ukraine [announcement No. 1906-49 posted on the web portal of the Authorized Agency, Bulletin No. 128 (13.11.2014) of 13 November 2014];
- Procurement of public order and public security-related services (24/7 protection of facilities and territories of autonomous passenger service units) by Southwestern Railways State Territorial and Sector Association [announcement No. 151993 posted on the web portal of the Authorized Agency, Bulletin No. 278 (23.06.2015) of 23 June 2015].

Fine: UAH 3,551 thousand

DEFENDANTS:
System Group Ukraine LLC,
UBS LTD LLC

Infringement


Fine: UAH 40,592 thousand
HARMONISATION OF PUBLIC PROCUREMENT SYSTEM IN UKRAINE WITH EU STANDARDS

DEFENDANTS:
Svit SR LLC, Energoosnova LLC, Teplo-Holding LLC and Mining and Production Company Enerperspective LLC

Infringement

Infringement provided for by Article 50(1) and Article 6(2)(4) of the Law of Ukraine “On Protection of Economic Competition” in the form of anticompetitive concerned actions related to bid rigging in the following procurement procedures:
- Procurement procedure with the ID code ДК-016:20110 - 05.10.1 Bituminous coal under the announcement of planned procurement No. 046405 posted on the web portal of the Authorized Agency, Bulletin No. 12 (858) of 10 February 2014, held by Kryzhopol Regional Intensive Care Hospital in Vinnytsia Oblast;
- Procurement procedure with the ID code ДК-016:20110 - 05.10.1 Bituminous coal under the announcement of planned procurement No. 139460 posted on the web portal of the Authorized Agency, Bulletin No. 18 (10.06.2014) of 10 June 2014, held by the Department of Education of Murovani Kurylivtsi Raion State Administration in Vinnytsia Oblast;
- Procurement procedure with the ID code ДК-016:20110 - 05.10.1 Bituminous coal under the announcement of planned procurement No. 239622 posted on the web portal of the Authorized Agency, Bulletin No. 103 (846) of 30 December 2013, held by the Department of Education of Trostianets Raion State Administration in Vinnytsia Oblast.

Fine: UAH 9,347 thousand

DEFENDANTS:
Kolar S.I.M. LLC, I. I. Herezenivska Sole Trader

Infringement

Infringement provided for by Article 50(1) and Article 6(2)(4) of the Law of Ukraine “On Protection of Economic Competition” in the form of anticompetitive concerned actions related to bid rigging in the following procurement procedures:
- Procurement procedure with the ID code ДК-016:2010 - 42.11.1 Motorways and highways, other roads, road elements, take-off runways of airports (refreshment and application of road surface marking on the streets of Rivne) held by the Housing and Utilities Department of the Executive Committee of Rivne City Council [announcement of the procurement procedure No. 130022 posted on the web portal of the Authorized Agency, Bulletin No. 17 (06.06.2014) of 06 June 2014];
- Procurement procedure with the ID code ДК-016:2010 - 2030.1 Polymer paints and varnishes (masking paint for take-off runways) held by Boryspil International Airport State Enterprise [announcement of the procurement procedure No. 123062 posted on the web portal of the Authorized Agency, Bulletin No. 5 (21.05.2014) of 21 May 2014].

Fine: UAH 669 thousand
Bid rigging

Analysis of judicial practice of applying Article 6(2)(4) of the LPEC

1. Anticompetitive concerted actions are concerted actions that caused or may cause prevention, removal or restriction of competition.

2. In particular, anticompetitive concerted actions are concerted actions related to:
   ...
   4) bid rigging in procurement procedures, auctions, contests, tenders

3. Anticompetitive concerted actions also include similar actions (omission) by economic operators in the commodity market that caused or may cause prevention, removal or restriction of competition, provided that the analysis of the situation in the commodity market proves lack of any objective reasons for such actions (omission)
Bid rigging

Analysis of judicial practice of applying Article 6(2)(4) of the LPEC

1. Anticompetitive concerted actions are concerted actions that caused or may cause prevention, removal or restriction of competition.

2. In particular, anticompetitive concerted actions are concerted actions related to:

   4) bid rigging in procurement procedures, auctions, contests, tenders

3. Anticompetitive concerted actions also include similar actions (omission) by economic operators in the commodity market that caused or may cause prevention, removal or restriction of competition, provided that the analysis of the situation in the commodity market proves lack of any objective reasons for such actions (omission)
1. Anticompetitive concerted actions are concerted actions that caused or may cause prevention, removal or restriction of competition.

2. In particular, anticompetitive concerted actions are concerted actions related to:
   4) bid rigging in procurement procedures, auctions, contests, tenders

3. Anticompetitive concerted actions also include similar actions (omission) by economic operators in the commodity market that caused or may cause prevention, removal or restriction of competition, provided that the analysis of the situation in the commodity market proves lack of any objective reasons for such actions (omission).

Ruling of the Plenary Session of the Supreme Economic Court of Ukraine No. 15 of 26 December 2011 “On certain issues relating to the practice of application of competitive law”

Coffered actions by economic operators constitute a particular type of infringement of the law on protection of economic competition, regardless of whether the economic operators in question or one of them has a monopoly (dominant) position in the market.

To qualify actions of economic operators... as anticompetitive concerted actions... it is not always necessary to establish whether such actions did have implications such as prevention, removal or restriction of competition, violation of interests of other economic operators (competitors, buyers) or consumers, in particular by causing damage (loss) to them or other substantial violation of their rights and interest, or the occurrence of other relevant implications.

It is sufficient to establish that actions, recognized by the law... as anticompetitive concerted actions did take place (Article 6(2) of the LPEC)
Ruling of the Plenary Session of the Supreme Economic Court of Ukraine No. 15 of 26 December 2011 —
Stumbling block

Decision of the AMCU body must contain proofs of restriction of competition caused by the actions (omission) of the economic operator or other negative impact of such actions (omission) on the level of competition in the market identified by the respective body, within a certain period of time, study price trends, circumstances and reasons of their increase or decrease, reasonableness of changes in prices, relations between the actions (omission) of the economic operator and behaviour of other players in the commodity market, including those that were not brought to responsibility for the infringement of the law on protection of economic competition, expenditures of the economic operator that influence the cost of the commodity, etc.

It is exactly the AMCU body that must prove that the interested person’s references to other factors that may influence the behaviour of the economic operator (in particular, references to the specific nature of a particular commodity market, period and cost of commodity storage, terms and cost of delivery, costs relating to the marketing of the commodity, etc.) are not reasonable. Such body must not only prove that the behaviour of the economic operators in the market were similar and simultaneous (synchronous), but also establish, by conducting economic analysis (including by means of engaging specialists and experts where necessary), that there are no factors (explanations), other than prior collusion, of the parallel behaviour of such economic operators.

P. 8.3

Similarities in actions (omission) of economic operators are not a sufficient proof of a prior collusion (anticompetitive concerned actions). Anticompetitive concerted behaviour must be established and proved, and respective proofs must be indicated in the decision of the body of the Antimonopoly Committee of Ukraine. In this case, similarity must result from anticompetitive concerted behaviour, and not just be a result of coincidence in the actions of economic operators caused by the specific nature of a respective commodity market.

Conclusion of the AMCU body about lack of any objective reasons for the economic operator to perform similar actions (omission) must be based on the results of analysis of the whole set of factors that objectively (beyond control of the economic operator) influence its behaviour in disputable relations, instead of being a consequence of a limited set of facts (e.g. only the price of the commodity).
HARMONISATION OF PUBLIC PROCUREMENT SYSTEM IN UKRAINE WITH EU STANDARDS

Application of p. 8.3 of the Ruling of the Plenary Session of the Supreme Economic Court of Ukraine No. 15 to collusions

**Standpoint of the Committee**

P. 8.3 of the Ruling of the Plenary Session of the Supreme Economic Court of Ukraine No. 15 deals with proving the fact of infringement according to Article 6(3) of the LPC (similar actions) and does not apply to cases of collusions in procurement procedures (Article 6(2) of the same Law).

**Traditional standpoint of courts**

Whenever economic courts consider disputes on rendering invalid a decision of the AMCU body establishing that the actions of the economic operator are qualified as an infringement in the meaning of Article 6(2)(4) of the LPC, they must not deal with establishing whether such decision complies with Article 6(3) of the LPC.

**BUT suddenly:**

P. 8.3 of the Ruling of the Plenary Session does not refer to any particular paragraph of Article 6 of the LPC, so the legal opinion on the assessment of similarities in actions (omission) of economic operators described in this point as a proof of prior collusion (ACA) applies in general to Article 6 of the same Law.

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Difference in the standard of proving infringement

**Without applying p. 8.3 of the Ruling of the Plenary Session of the SECU**

AMCU must prove that tenders showed concerted behaviour

If the defendant fails to prove the AMCU’s arguments wrong

Negative effect on competition is obvious and needs no proof

Actions of the defendant are qualified as infringement in the meaning of Article 6(2)(4) of the LPC

**With applying p. 8.3 of the Ruling of the Plenary Session of the SECU**

AMCU must prove that tenders showed concerted behaviour

The AMCU must disprove (including by conducting economic analysis) other factors

Actions of the defendant are qualified as infringement in the meaning of Article 6(2)(4) of the LPC
Difference in the standard of proving infringement

Same errors and same peculiarities in documents included in tenders, in its turn, suggest that the tenderers exchanged information to make one of them the winner. This removes competition among the tenderers, and the contracting entity fails to achieve its key goal — reduce price. All this shows that the behaviour of economic operators during the preparation to and participation in the procurement procedure was concerted which resulted in bid rigging.

Difference in the standard of proving infringement

Certain similarities in tenders, provided there is no conclusive evidence of unlawful or concerted informed preparation of tenders or pricing by the tenderers concerned, unreasoned decrease or increase in prices aimed to prevent or restrict competition in the procurement procedure, and provided there are no proofs of anticompetitive concerted behaviour during the procurement procedure, are not evidence of any prior collusion (anticompetitive concerted actions) or that these actions aim at removing or prevention of competition or bid rigging.

Ruling of the SECU of 22 September 2015
in case No. 912/490/15-r
Attempts of appeal to the Supreme Court of Ukraine

- **Grounds:**
  - Different application of the same provisions of material law by court of cassation which caused the adoption of quite different decisions in similar legal relations (11125(1)(1) of the Economic Procedure Code)

- **But:**
  
  “Having discussed the arguments of the claimant and having examined the materials attached to the claim, the board of judges considers the claim of the Committee to be groundless, and its arguments have not been confirmed by the materials attached”

Application of p. 8.3 of the Ruling of the Plenary Session of the Supreme Economic Court of Ukraine No. 15 to collusions

- The SECU by its Ruling of 25 April 2017 has rendered groundless the courts’ reference to pp. 8.2, 8.3 of the Plenary Session of the SECU as grounds for cancelling decisions of the AMCU bodies in respect of ACA in procurement procedures:

  references of courts of lower instances to points 8.2 and 8.3 of the aforementioned Ruling of the Supreme Economic Court of Ukraine No. 15 of 26 December 2011 are groundless since the AMCU has qualified the infringement of the claimant under Article 6(2)(4) of the Law No. 221
Bid rigging

Challenges

Lack of deterrent effect of imposed fines and disqualification

- Delayed consideration of cases in court
- Liquidation, reorganization, bankruptcy of defendants
- Sale of assets
- Sham tenderers
Challenges relating to collection of evidence to prove ACA

Failure to provide information by public authorities and a certain group of legal entities and natural persons

Article 22-1 of the Law of Ukraine on the AMCU: Economic operators, associations, public authorities, local self-governing authorities, bodies in charge of administrative and economic management and control, other legal entities, their structural subdivisions, branches, representative offices, their officers and employees, natural persons shall, at the request of a body of the Antimonopoly Committee of Ukraine, head of local unit of the Antimonopoly Committee of Ukraine, authorized employees of the Antimonopoly Committee of Ukraine or its local unit, provide documents, things or other information carriers, explanations, other information, including sensitive information and bank information.
Challenges relating to collection of evidence to prove ACA

Article 21 of the Law of Ukraine “On Information”:

Sensitive information includes confidential, secret information and information for internal use only

Conclusion: The AMCU has the right to request any information, regardless of the access conditions

Challenges relating to collection of evidence to prove ACA

Responses of public authorities to the requests by the AMCU:

According to Article 17, sub-point..., Section 1 of the Tax Code, taxpayer has the right to non-disclosure of information about itself by controlling authorities (response by the State Fiscal Service, no information has been provided)

Please be advised that the conducted inspection has confirmed the fact of issue of certificates of no criminal record (response by the Ministry of Internal Affairs, no information has been provided)

A proper reason to provide personal data from the register of insured persons... is ruling of investigative judge, court (response by the Administration of the Pension Fund, no information has been provided)

Your letter contains no information showing that your request aims to ensure national security or is in connection with initiating criminal proceedings (response by local unit of the Ministry of Justice, no information has been provided)
Challenges relating to collection of evidence to prove ACA

No responsibility is provided for by law for non-provision of information by public authorities.

Challenges relating to collection of evidence to prove ACA

Notary secrecy

Article 8 of the Law of Ukraine “On Notaries”

Statements of notarial deeds and other documents must be provided by notary within ten business days at the reasoned written request by courts, prosecutor’s office, investigative bodies, bodies in charge of pre-trial investigations in connection with criminal proceedings, civil, economic, administrative cases, cases on administrative offences being considered by these bodies.

X The AMCU has no access to notary’s records
Challenges relating to collection of evidence to prove ACA

Bank secrecy

Article 60 of the Law of Ukraine “On Banks and Banking Activity”

Information about activities and financial standing of clients that the bank became aware of in the process of providing services to the latter and in connection with relations with clients or third parties in the course of providing services by the bank shall be secret bank information.

Challenges relating to collection of evidence to prove ACA

Bank secrecy

Article 62 of the Law of Ukraine “On Banks and Banking Activity”

Information about legal entities and natural persons containing secret bank information must be disclosed by banks to: prosecution authorities, the Security Service of Ukraine, the State Investigation Agency, the National Police, the National Anti-corruption Bureau of Ukraine, the Antimonopoly Committee of Ukraine — at their written request in respect of transactions with accounts of a particular legal entity or natural person (business entity) for a particular period of time.

X The AMCU has no access to notary’s records
Challenges relating to collection of evidence to prove ACA

Bank secrecy

Point 3.5 Rules of storage, protection, use and disclosure of secret bank information

In case of provision of information about transactions with accounts of a particular legal entity or natural person (business entity) for a particular period of time, the bank discloses information about cash flows on such accounts without showing counterparties in such transactions.

X Considering the resolutions of the NBU, information about cash flows is not useful for investigative purposes

Challenges relating to collection of evidence to prove ACA

Bank secrecy

AMCU’s standpoint

AMCU has the right to request full secret bank information

+ AMCU’s standpoint has been confirmed by court practice

NBU’s standpoint

Information about counterparties may be disclosed only under a court decision or with the consent of the client.
Challenges relating to collection of evidence to prove ACA

Conducting inspections

**Inspection commission is authorized, in particular, to:**

1. Freely access the office of the entity to be inspected, provided they present their ID and documents authorizing the inspection.
2. During the inspection, have free access to information storage spots, including documents, computers owned by the entity to be inspected, magnetic media etc., obtain copies of such information, documents and other materials necessary to conduct such inspection.
3. Request verbal or written explanations from officers and employees of the entity to be inspected, other persons in respect of issues relating to the objectives of the inspection.
4. Exercise other powers under the law on protection of economic competition.
Challenges relating to collection of evidence to prove ACA

Conducting Inspections

At the same time:
1. The AMCU lacks proper specific hardware and software to allow copying and restoring of deleted information on computers owned by entities to be inspected.
2. There are no specific regulations on the procedure of video and audio recording of unlawful actions of officers of the entity to be inspected, aimed to create obstacles to the inspection, and the AMCU lacks means of such recording.
3. There are no specific regulations on involving the public as witnesses during inspections to document unlawful actions of officers of the entity to be inspected.
4. According to Article 7 of the Law of Ukraine “On the Antimonopoly Committee of Ukraine”, employees of the AMCU may inspect offices and vehicles of economic operators according to the procedure prescribed by law. However, the Law does not establish the procedure of such inspections. Moreover, there is no established procedure of inspection of living quarters and other property used in economic activities of economic operators.

Challenges relating to collection of evidence to prove ACA

Conducting Inspections

At the same time:
5. According to Article 15 of the Law of Ukraine “On the Antimonopoly Committee of Ukraine”, employees of the Committee may involve employees of law enforcement authorities in arranging consideration of cases and inspections, in particular with the purpose to take measures provided for by law which are necessary to remove obstacles. The law in force does not contain provisions that would provide for, bind or authorize law enforcement authorities to take certain action aimed to remove obstacles.
Possible measures for strengthening capacities for the detection of bid-rigging

Mr. Oleksandr Shatkovskiy
Deputy Head of the Project
(based on Project report by Heinrich Hoeltzer)

Internationally recognised understanding of bid rigging

- Bid-rigging activities are sometimes also linked with corruption issues, where either the contracting authority or a member of the Tender Committee would assist two or more tender participants to organise a bid-rigging activity for the purpose of obtaining an extra profit, outside competition. Such issues must be assessed separately as a "vertical" event, often falling under criminal law, rather than under competition law, which is defined to be a "horizontal" anti-competitive behaviour.

- Bid-rigging, therefore, do not deal with corruption issues or any other conspiracy between tender participants and the contracting authority but is understood as agreed joint anti-competition actions between economic operators!
Most often kinds of bid-rigging

- Bid suppression
- Complementary bidding
- Bid rotation/rotation of “lucky” winners
- Territorial market division
- Subcontracting as award for imitation of competition at tender

Checklist of the Swedish Competition Authority to Detect Bid-rigging

1. Suspiciously high prices?
2. Prices that are suspiciously inconsistent? (same goods from same suppliers but different tenders)
3. Suspiciously big differences in prices?
4. Suspiciously similar prices?
5. Suspected boycott – no bids at all?
6. Suspiciously few tenders for popular market product?
7. Suspiciously similar tenders (on content, form, formulations, mistakes/typos)?
8. Suspicious patterns?
9. Suspicious subcontracting arrangements between recent competitors?
10. Suspiciously careless tenders (for ease rejection)?
OECD Guidelines

1. Market structure may be suspicious
2. Communication between bidders
3. Further indicators for information exchange
4. Relationship among bidders
5. Suspicious bidding patterns
6. Unusual behaviour
7. Similarities in bidding documents

U.S. Recommendations as to Construction Markets (Highways and Airports)

- Background of approach
- Initial Screening
- Particular Recommendations to Contractors:
  - No total value of contract given to bidders
  - Prequalification of bidders
  - Request of line item bids, no lump sums
  - Identification of joint ventures, partners, subcontractors, suppliers (additional data)
Continuation of U.S. Recommendations

- Review of regional cost differences and cost estimations
- Regular antitrust audits of tenders
- Establishment of computer-based monitoring system of tenders all over U.S.
- Software programme for red flags to go up

Recommendations to AMCU

Indirect Actions
• Increase Public Awareness
• Improvement of Leniency Programme

Direct Actions
• Increase AMCU Staff on bid-rigging
• Checking of suspicious indicators
• Install long term computer based monitoring
Recommendations to AMCU

- Analysis of information from Dozorro, Hawai apowii;
- Active PR-presence in public space to inform about successes in disclosure of cases of bid rigging and punishment of violators;
- Attraction of donors technical assistance for training of respective staff in Kyiv and regions;
- Consideration “self-cleaning” approach (violator acknowledges its fault, pays penalty, punishes/fires guilty staff and may be cleaned from “bid rigging” list under art.17.1.4)

THANK YOU FOR YOUR ATTENTION!
### ANNEX 6: List of Participants

**Date**: 07 July 2017 (Friday)

**Place**: Hotel “Opera”

<table>
<thead>
<tr>
<th>No</th>
<th>Name</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Boris Filipov</td>
<td>EU Delegation to Ukraine</td>
</tr>
<tr>
<td>2.</td>
<td>Sydorenko N.S.</td>
<td>Deputy Head Antimonopoly Committee of Ukraine – state commissioner.</td>
</tr>
<tr>
<td>3.</td>
<td>Vlad Udovychenko</td>
<td>Head of the Department AMCU on separate types of anti-copetition agreed activity</td>
</tr>
<tr>
<td>4.</td>
<td>Roman Koval</td>
<td>Head of the Department AMCU on issues of appeals in public procurement field</td>
</tr>
<tr>
<td>5.</td>
<td>Denis Levchenko</td>
<td>State enterprise “Prozorro”</td>
</tr>
<tr>
<td>6.</td>
<td>Nataliya Shymko</td>
<td>MEDT, Deputy Head of the Department of Public Procurement Regulation of the Ministry of Economic Development and Trade</td>
</tr>
<tr>
<td>7.</td>
<td>Lylia Lakhtionova</td>
<td>MEDT, Deputy Director of the Department on regulation of public procurement – head of the department on professionalization in the field of public procurements</td>
</tr>
<tr>
<td>8.</td>
<td>Ivan Lakhtionov</td>
<td>Transparency International Ukraine</td>
</tr>
<tr>
<td>9.</td>
<td>Tetyana Kolesnyk</td>
<td>Public procurement expert, Facebook community “Public Procurement Reformers”</td>
</tr>
<tr>
<td>10.</td>
<td>Yaroslava Dubko</td>
<td>Public procurement expert, Facebook community “Public Procurement Reformers”</td>
</tr>
<tr>
<td>11.</td>
<td>Rosyna Boyko</td>
<td>Journal “Public Procurement”</td>
</tr>
<tr>
<td>12.</td>
<td>Nick Smirnov</td>
<td>Public procurement expert, Facebook community “Public Procurement Reformers”</td>
</tr>
<tr>
<td>13.</td>
<td>Oleksandr Nikitenkov</td>
<td>Lawyer</td>
</tr>
<tr>
<td>14.</td>
<td>Vitaliy Tcvygun</td>
<td>Director of the Branch &quot;Center for Production&quot; of Public Joint Stock Company &quot;Ukrainian Railway&quot; is a separate unit that carries out functions delegated to it on behalf and in the interests of PJSC &quot;Ukrzaliznytsya&quot;.</td>
</tr>
<tr>
<td>15.</td>
<td>Maksym Kovbasenko</td>
<td>National Anti-Corruption Bureau</td>
</tr>
<tr>
<td>16.</td>
<td>Eugen Pryanyshnykov</td>
<td>National Anti-Corruption Bureau</td>
</tr>
<tr>
<td>17.</td>
<td>Iryna Vlasenko</td>
<td>Director of the Department at State Audit Service of Ukraine</td>
</tr>
<tr>
<td>No</td>
<td>Name</td>
<td>Organization</td>
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<tr>
<td>18.</td>
<td>Tetyana Rudenko</td>
<td>Public procurement expert. Facebook community &quot;Public Procurement Reformers&quot;</td>
</tr>
<tr>
<td>19.</td>
<td>Oleksandr Bordskiy</td>
<td>Private businessman, participant of the public procurement procedures</td>
</tr>
<tr>
<td>20.</td>
<td>Denis Krasnikov</td>
<td>Ukrainian Union of Industrialists and Entrepreneurs</td>
</tr>
<tr>
<td>21.</td>
<td>Olena Sherban</td>
<td>Center for combating corruption</td>
</tr>
<tr>
<td>22.</td>
<td>Memetova Inna</td>
<td>Kyiv School of Economics</td>
</tr>
<tr>
<td>23.</td>
<td>Svyatoslav Zhuktenko</td>
<td>Public procurement expert</td>
</tr>
<tr>
<td>24.</td>
<td>Dr. Eugene Stuart</td>
<td>Team Leader, EU Project</td>
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<tr>
<td>25.</td>
<td>Oleksandr Shatkovskiy</td>
<td>Deputy Team Leader, EU Project</td>
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<tr>
<td>26.</td>
<td>Steen Bruun-Nielsen</td>
<td>Senior public procurement expert, EU Project</td>
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<tr>
<td>27.</td>
<td>Diana Hanchak</td>
<td>Public procurement expert, EU Project</td>
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<tr>
<td>28.</td>
<td>Oksana Sapiga</td>
<td>Communications Expert, EU Project</td>
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<tr>
<td>29.</td>
<td>Anna Stuart</td>
<td>Manager, EU Project</td>
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<tr>
<td>30.</td>
<td>Tetyana Lysovska</td>
<td>TAPAS USAID Project</td>
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<tr>
<td>31.</td>
<td>Oleksandra Kuzmenko</td>
<td>TAPAS USAID Project</td>
</tr>
<tr>
<td>32.</td>
<td>Tetyana Stefyuk</td>
<td>Assistant to MP Ms. Alyona Kosheleva</td>
</tr>
<tr>
<td>33.</td>
<td>Valeriy Shertyn</td>
<td>Head of tender committee at UZ branch</td>
</tr>
<tr>
<td>34.</td>
<td>Koltyk Oksana</td>
<td>Kyiv State Administration</td>
</tr>
<tr>
<td>35.</td>
<td>Shelestyuk Lyudmyla</td>
<td>AMCY, press service</td>
</tr>
<tr>
<td>36.</td>
<td>Boyko Nadia</td>
<td>SE “Prozorro”</td>
</tr>
<tr>
<td>37.</td>
<td>Bura Alina</td>
<td>SE “Prozorro”</td>
</tr>
<tr>
<td>38.</td>
<td>Kostenko Eugen</td>
<td>AMCU, Deputy Head of the Department</td>
</tr>
</tbody>
</table>