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COMPETITION LAW OF UKRAINE



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The research "Competition Law of Ukraine" by Oleksiy O. Kot is dedicated to give general overview of competition and antitrust regulation in legislation of Ukraine. After a brief description of the history of antitrust legislation development the main attention in this research paid to regulation of:

- protection from abuse of the monopoly;
- cartels (concerted actions);
- concentrations (M&A transactions);
- unfair competition;
- misleading information.

Liability for antitrust legislation breach as well as problems of the actual court practice are also analysed in this research.

Laws of Ukraine "On Antimonopoly Committee of Ukraine" and "On Protection of Economic Competition" (unofficial translation of their current versions with latest amendments on December 2020) are included as annexes to this publication.

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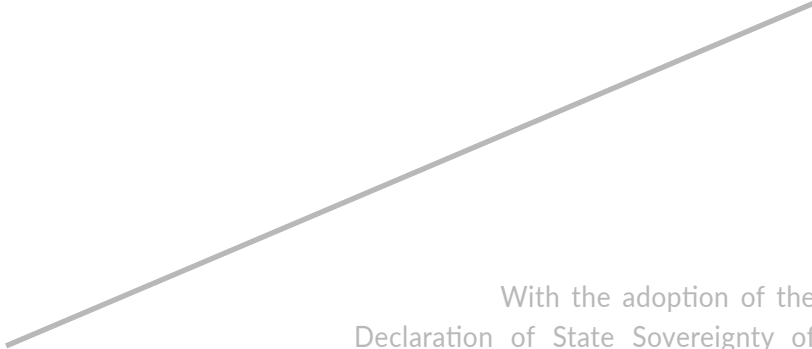
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1. BRIEF HISTORY OF ANTITRUST LEGISLATION DEVELOPMENT



With the adoption of the Declaration of State Sovereignty of Ukraine on 16 July 1990 the state had taken the direction of an independent economic policy, which aims to create an effective mechanism for regulating economic relations. As the effective market competition is extremely important part of any modern economy, the steps to ensure demopolization of economy and development of fair and competitive market were taken.

In 1992 Ukraine adopted a program of economic reforms and policies on Ukraine, which included establishing control over monopolies, increased competition, organizational and economic restructuring schemes and to stimulate the creation of new

entities. As one of the steps to fulfill this program the Law of Ukraine “On Monopoly Restrictions and Prevention of Unfair Competition in Business Activities” of 18 February 1992 was adopted.

This Law was heavily based on the Soviet Union Law “On Restriction of Monopolistic Activity in the USSR” of 07.10.1991 and introduced only basic regulation in this field. Nevertheless, the start of what can be described as a first stage of antimonopoly regulation development was made. A year later this development was followed by adoption the Law “On Antimonopoly Committee of Ukraine” of 26.11.1993, which created the Antimonopoly Committee as an executive authority body with special status independent from other government bodies.

Next several years some amendments to the laws were made, but no critical changes introduced. At the same time, with the development of Ukraine economy it was clear that the outdated legislation needed substantial improvement.

Thus, in 1996 the Law of Ukraine “On Protection Against Unfair Competition” of 07.06.1996 was adopted. In two years substantial changes to the Law “On Monopoly Restrictions and Prevention of Unfair Competition in Business Activities” were introduced in 1998. Eventually, in 2001 the new Law of Ukraine “On Protection of Economic Competition” was adopted and came into force a year later.

The later was a completely new legislative act developed based on European and US antitrust legislation and best practice. The adoption of this law introduced modern principles and rules of antimonopoly legislation and has drafted it in a way we see it today. This can be marked as second stage of antimonopoly legislation development.

The Law introduced significant number of new principles, terms and concepts some of them completely new for the Ukrainian legislation, for example – leniency. The Law also introduced detailed regulations regarding the procedures of case consideration, rights and obligations of the persons involved in the case, the procedure of appeal, authority of the AMCU during the case investigation etc.

It should be noted that the developers of the Law have clearly made a significant work in systematization and adaptation of world antitrust practice to the Ukrainian legislation system. Thus, it is not surprising that the Law survived up to this date with what can be considered moderate, evolutionary changes. For Ukrainian legislation adopted in early 2000 it is a substantial achievement.

Another significant change in the antimonopoly regulation of early 2000 is a more proactive stance taken by the Antimonopoly Committee of Ukraine.

The Committee had begun actively starting its own investigations, advocacy of competition. Within several years the body has established as an independent and fair authority with minimal dependability from politics and bribes. It also established itself as a body which should not be trifled with but as the same time as an open for dialog and negotiations.

The Committee also developed its own case practice and approaches to antimonopoly legislation interpretation and adopted a number of explanatory letters regarding the complex matters of legislation application.

Next substantial stage of legislation development could be considered 2008. In December 2008 a Law of Ukraine was adopted which introduced significant changes to the Law “On Protection

Against Unfair Competition”. Several articles describing the cases of unfair competition were completely redrafted, the limitation period for when the person can be liable for violation was introduced and changes were made to the procedures of investigating and consideration of the cases. Most important however was the introduction of a new type of unlawful unfair competitive practice – providing misleading information to the consumers.

This new violation have established factually separated from the other unfair competition cases practice, which dealt with unfair advertising in any form.

The Antimonopoly Committee at first was very cautious with using and investigation the cases of misleading information but in 2011-2012, after the preliminary case practice and Committee approach to the interpretation of the article was established, it became a rather active field. Additionally to opening cases on the third party statements the Committee had also actively studied the advertising and information materials used in websites, press releases etc. of the companies.

On this moment the cases of misleading information constitute the biggest portion of all unfair competition cases. For example, in 2015 the misleading information was 89% of all unfair competition violations investigated by the AMCU.

In 2012-2013 it became clear that while the antimonopoly legislation was rather developed, the need for update for some obsolete regulations as well as introducing newly developed European and US antitrust practices. As example the problem with financial boundaries excess of which resulted in need for applying for the AMCU permit for M&A transaction may be mentioned. The established boundaries were drastically low and AMCU had to consider

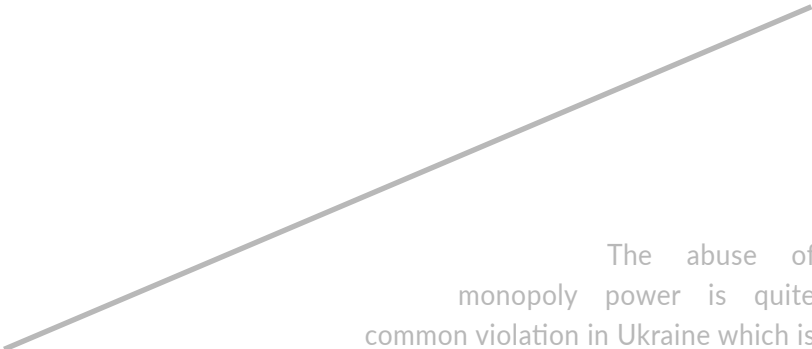
substantial number of applications every year, which undoubtedly lowered the performance of the Committee.

Thus, the AMCU began development of number of the legislation drafts, including the changes to the laws. Unfortunately, due to the various political reasons this initiative mostly failed. The only legislative act change worth mentioning was the approved Regulation on submission of applications to the Antimonopoly Committee of Ukraine regarding the exemption from liability for a breach of legislation on economic competition protection under paragraph 1 of Article 50 of the Law of Ukraine “On Protection of Economic Competition” (Regulation on exemption from liability) which established detailed leniency procedure.

It was only in 2015, after the revolution in Ukraine and election of the new AMCU members the some of the mentioned drafts were finally adopted. In 2015 the changes to the Law “On Protection of Economic Competition” introduced obligation to publish all AMCU decisions were established to ensure the body transparency. The Committee also approved Recommendations which established the approach for calculation of the fines. Additionally, in 2016 the articles of the Law “On Protection of Economic Competition” regarding the concentrations were changed establishing the new reasons when the person should apply to the Committee for the permit and a revised Recommendations on fines calculation were adopted.

Further developments of the legislation were focused on updating the various legislative acts adopted on the basis of the changes to the Law “On Protection of Economic Competition”. In particular several key recommendations were adopted: Methodical Recommendations on application of term “control”, Standard requirements for vertical concerted actions of the business entities etc.

2. REGULATIONS ON PROTECTION FROM ABUSE OF MONOPOLY POWER



The abuse of monopoly power is quite common violation in Ukraine which is connected to the fact that Ukrainian markets remain strong monopolistic tendencies.

The regulation on protection from the abuse of monopoly power is established by Articles 12 and 13 of the Law of Ukraine “On Protection of Economic Competition”.

According to the Law the monopoly (dominant) position of the company is when:

- the entity has no competitor on the market;
- the entity has no significant competition due to limited access for other entities to the purchase of raw materials

and sale of goods, the presence of market barriers for other entities, the availability of benefits or other circumstances.

According to the Article 12 of the Law of Ukraine “On Protection of Economic Competition” the entity is considered as a monopolist in case its market share exceeds 35%, unless the entity proves that it has significant competition.

The Law also establishes that several entities are considered as a monopolists in cases:

- total market share of no more than 3 entities with the biggest market share on particular market exceeds 50%;
- total market share of no more than 5 entities with the biggest market share on particular market exceeds 70%.

It should be noted that the only body in Ukraine which has the official power to calculate market share of the company is the Antimonopoly Committee of Ukraine itself. The procedure of market share calculation is set by the Methodology of the definition of a monopoly (dominant) position of the entity on the market, approved by the Resolution of the AMCU of 05.03.2002 № 49.

The mentioned Methodology sets the procedures and rules for determining the territorial and commodity boundaries of the market, as well as the procedure of market calculation.

It should be noted that the Methodology is quite subjective and allows for a degree of manipulation by changing the territorial and commodity boundaries of the market thus limiting the amount of companies acting on the particular market.

This as well as Committee approach to the market share calculation has repeatedly led to accusations in absence of transparency of

the AMCU. The provisions of the legislation which establish that only the Committee has the authority to officially calculate market share did not make the matter simpler.

The Committee approach to the calculation is somewhat strange in some cases and the overall tendency is artificial lowering of the market amount by determining the narrowed market boundaries and thus increasing the shares of the companies acting on the market. At the same time this is a persistent approach of the AMCU and thus it cannot be said that the Committee direct this approach against the particular company or companies as the accusations said.

In any way, this approach of the Committee created some very peculiar markets like the market of car service of the cars which are still having the manufacturer guarantee.

The abuse of monopoly power according to the Article 13 of the Law of Ukraine “On Protection of Economic Competition” is considered as actions or omissions of an entity that holds monopoly (dominant) position on the market, which resulted, or may lead to the prevention, elimination or restriction of competition, or infringement of the interests of other undertakings or consumers, which would be impossible under the conditions of existence of substantial competition in market.

In particular, the following actions are considered as abuse of monopoly power:

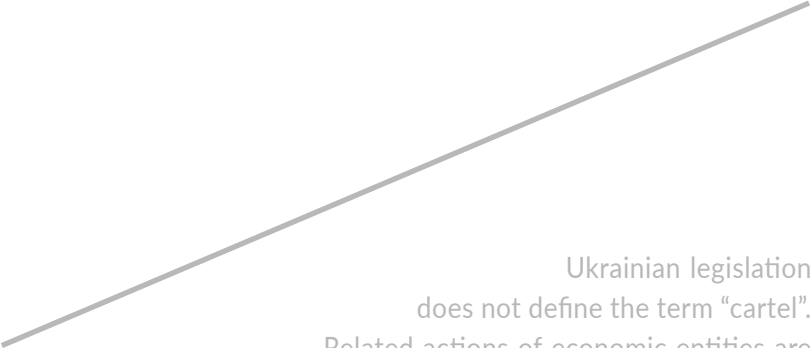
- 1) setting of prices or other conditions of purchase or sale of goods, which would be impossible to establish the conditions the existence of significant competition in the market;

- 2) applying different prices or various other conditions to the equivalent agreements with undertakings, sellers or buyers without objectively justified reasons;
- 3) stipulation in agreements provisions regarding supplementary obligations which, by their nature or in terms of trade and other fair customs in business activities not related to the such agreements;
- 4) limiting production, markets or technical development, caused or may cause harm to other entities, buyers, sellers;
- 5) partial or complete rejection of the purchase or sale of the goods in the absence of alternative sales or purchasers;
- 6) significant limitations of the competitiveness of other subjects on the market without objectively justified reasons;
- 7) obstructing access to the market (exit from market) or eliminating from the market of the vendors, customers, other entities.

Any actions which are considered as abuse of monopoly power is forbidden and punishable by the Law.

The fine for the abuse of monopoly power is set by the Article 52 of the Law of Ukraine “On Protection of Economic Competition” and amounts up to the 10% of the total sales of the goods (services) of the company (company group) for the year previous to the year in which the company is fined.

3. REGULATIONS ON CARTELS CONCERTED ACTIONS



Ukrainian legislation does not define the term “cartel”.

Related actions of economic entities are treated as anticompetitive concerted actions.

Traditionally cartel is considered as informal agreement of the parties of the market sector to buy or sell products or services at a certain price.

At the same time, it should be understood that the anticompetitive concerted action within the meaning of Article 6 of the Law of Ukraine “On Protection of Economic Competition” is a broader concept, which includes the following concerted actions of the entities:

- Establishing prices or other conditions of purchase or sale of goods;

- Limiting production, markets or products to establish control over them;
- Allocation of markets or sources of supply;
- Distortion of the results of trading, auctions, contests, tenders;
- Elimination of the market or restrict access to the market of other entities, buyers, sellers;
- The use of different conditions to equivalent agreements with other business entities, puts the latter at a disadvantage in the competition;
- Conclusion of agreements subject to acceptance by the other business entities additional commitments;
- Significant limitation of competitiveness of other economic entities on the market without objective reasons.

Additionally to the above mentioned as anticompetitive concerted actions may be considered as entities committing similar actions (inaction) on the commodity market, which led or may lead to preventing, elimination or restriction of competition if the analysis of the situation in commodity market denies the existence of objective reasons for committing such actions (inaction). In this case there can be no actual formal or informal agreement between the participants of such actions. The typical example of such actions is increasing of the price for goods because the company competitor also increased the price, but without any kind of agreement between them.

All anticompetitive concerted actions are forbidden according to the Law.

It should be noted that not considered as anticompetitive concerted actions if concerted actions are limiting the usage of goods

of other supplier, purchase or sale of other goods, setting the price or other conditions of sale of goods (i.e., typical dealer and distribution agreements) and limiting regarding the intellectual property, unless they significantly affect the competition on the market.

Additionally, some of the concerted actions do not require AMCU permit. These actions are described in the Standard requirements for concerted actions of entities for release from the permission of the Antimonopoly Committee of Ukraine for concerted actions of entities, approved by the Order of the AMCU 12.02.2002 № 27-p. In 2019 the changes were made to the requirements which changed the approach on how the release from obtaining the AMCU permit was granted. In particular, only market share now is taken into account, the financial figures of the participants no longer apply.

In particular, do not require permit following concerted actions:

- none of the participants of concerted actions have monopoly (dominant) position in any involved product market and don't have exclusive or pre-emptive rights or powers from the state or local government authorities, subjects of natural monopoly or other monopoly entities, and/or
- Aggregate market share of participants of the horizontal or mixed concerted action, in any involved product market does not reach 15 percent, or aggregate market share of all entities including consisting of participants of conglomerate concerted actions at any involved product market does not reach 20 percent.

In any case the following types of concerted actions does require permit regardless of the market share:

- concerted actions on setting prices (tariffs) for the sale or purchase of goods;
- concerted actions on division of markets or sources of supply by territorial principle, the range of goods, the volume of their sale or purchases, by the range of sellers, buyers or consumers, etc.;
- concerted actions on restrictions, including termination, production of goods or sale or purchase of goods;
- concerted actions on distortion of results of auctions, competitions of tenders.

In addition according to the Order of the AMCU dated 12.10.2017 No. 10-pn the Standard requirements for the vertical concerted action of the entities regarding the supply and use of the goods were approved. These requirements set the rules for the vertical concerted action which is typically allowed and does not require AMCU permit. This document was particularly important due to several high profile cases investigated by AMCU. For example – the case on concerted action of the Ukrainian consumer goods trade networks (supermarket networks).

According to the mentioned requirements the following vertical concerted actions are allowed and do not require AMCU permit:

- if the supplier's share on the market in which he sells the contract goods does not exceed 30 percent, and the buyer's share in the market in which he purchases the contract goods does not exceed 30 percent;
- vertical concerted action between the contractor and the subcontractor, where the subcontractor provides the

production of the contract goods solely to the contractor if the latter supplies the subcontractor with the technology or equipment necessary to produce the subcontractor for such goods, except for the obligations imposed on the subcontractor and do not use their own research and development or generally produce third-party products.

At the same time the following types of concerted actions do not cover by the abovementioned release:

- vertical concerted action taken between competing entities;
- vertical concerted actions containing rigid vertical restraints, namely, which, directly or indirectly relate to:
 - limitation of the buyer's ability to determine the price of the contract product, except for the supplier's actions to determine the maximum or recommended selling price, unless this leads to the establishment of fixed or minimum selling prices due to pressure from one of the participants of concerted actions or benefits (incentives) offered to such the participant;
 - a restriction on the territory or range of customers within which the buyer can sell the contract product, except for restrictions on the buyer's location;
- any direct or indirect obligation not to compete, the term of which has not been determined or exceeds 5 years;
- any direct or indirect obligation of the buyer not to produce, buy, sell or resell the goods after the termination of the agreement (contract);

- any direct or indirect obligation of the participant of the sampling system of supply not to sell the goods sold under the trade marks for goods and services (trade marks) of specific economic entities that are competitors of the supplier.

Article 10 of the Law of Ukraine “On Protection of Economic Competition” sets the cases when the concerted actions may be permitted by the AMCU. In particular, if the participants prove that concerted actions promote:

- improving the production, purchase or sale of goods;
- technical, technological and economic development;
- development of small and medium enterprises;
- optimize the export or import of goods;
- the development and application of unified technical conditions or standards for products;
- rationalization of production;

Such concerted actions may be permitted by the AMCU.

The procedure of application for the permit is set by the Regulation on the procedure for submitting applications to authorities of the Antimonopoly Committee of Ukraine on granting permission for concerted actions of the entities (Regulations on concerted actions), approved by the Order of the Antimonopoly Committee of 12.02.2002 No. 26-p.

The participants also may apply to the Committee for receiving the preliminary conclusions on whether the planned actions may be considered as concerted actions and whether they require permit in this case.

The participants should apply to the ACMU for obtaining the permit (unless the permit is not needed according to the legislation or Standard requirements) in case of:

- Concluding agreements between entities in any form.
- Creating entity, association, aim or consequence of which is the coordination of competitive behavior between participants or between them and the newly created entity, or joining to this association.
- Making decision by associations in any form.
- Implementation of any other concerted behavior (activity, inactivity) of participants that resulted or may result in prevention, elimination or restriction of competition.

Changes to the above-mentioned concerted actions, also requires permit of the Committee, if these changes involve changing the number of participants and/or spreading to other commodity markets, changes in the object and purpose of concerted action, the allocation of profits and losses between participants of concerted actions, order of formation and competence of managing body of created entity, and if these changes enhance consistency in participants market and/or distort competition between the participants of concerted actions otherwise.

The application for obtaining permit is submitted either to the Committee or to its territorial body.

To the territorial body of the Committee the application is submitted in case participants of concerted actions registered in one region and operate in the regional market, which does not go beyond that of the region, while concerted action that resulted or may result

in prevention, elimination or restriction of competition apply to markets that do not cross the geographical the boundaries of the region Ukraine. Other applications are submitted to the Committee.


The application is considered as received for consideration after 15 days after submission. During this time the Committee studies the application regarding the providing of all information and absence of the reasons which do not allow the consideration of the application.

The term for consideration of the application is one month for application for preliminary conclusions and permit for changes in concerted action is one month, for permit for concerted actions – three months.

The application should contain:

- name of the body to which the application is made;
- reference to the relevant legal act (paragraph part article), which provides for an applying to the Committee offices;
- name, details of the applicant and his representative (public authority, local government, bodies of administrative management and control entity, an individual of a foreign business entity in Ukraine, etc.);
- content of concerted action;
- description of a positive social effect of the concerted actions, changes in the concerted actions of the grounds provided by the Article 10 of the Law of Ukraine “On Protection of Economic Competition”;
- name, details (address, fax, phone, etc.) of the participants;
- list of documents and information attached to the application.

4. REGULATIONS ON CONCENTRATIONS M&A TRANSACTIONS



The Ukrainian antimonopoly legislation established a control regarding the mergers and acquisitions.

The Law of Ukraine “On Protection of Economic Competition” sets the term “concentration”. According to the Article 22 of the Law as concentration is considered:

- 1) merging entities or joining one entity to another;
- 2) acquiring, directly or through others control of one or several entities of one or more entities or parts of business entities in particular by:
 - a. the direct or indirect purchase, acquisition by other means of the assets in the form of integral property complex or structural unit of the entity, obtaining in management,

- rent, lease, concession or acquisition in another way the right to use the asset as a whole property complex or structural unit of an management, including the acquisition of assets subject entity being liquidated;
- b. the appointment or election to the position of head or deputy head of the supervisory board, management board, supervisory or other the executive body of the entity person who already holds one or more of the same positions in other entities or creation of the situation in which more than half positions of members of the supervisory board, management board, supervisory or other executive bodies of two or more entities owned by the same persons;
 - 3) the creation of an entity by two or more entities that for a long period will independently carry out economic activity, and such creation does not lead to coordination of competitive behavior between entities that created this entity or between them and the newly created entity;
 - 4) direct or indirect procurement, acquisition or by other means of obtaining the management of shares, which ensure the achievement or exceeding 25 or 50 percent of votes in the supreme governing body of the entity.

At the same time, part 3 of the Article 22 set the exclusion to the term of concentration, which are:

- 1) the creation of an entity which purpose or result in coordination of competitive behavior between the founders or

between them and the newly created entity. Such actions are considered as concerted actions;

- 2) acquisition of shares by the entity whose main activity is conducting financial transactions or transactions with securities if the acquisition carried out for the purpose of resale and provided that said person does not participate in the voting or management bodies of the purchased entity. In this case, resale must be made within one year from the date of acquisition of shares. At the request Antimonopoly Committee of Ukraine may decide to extend this period;
- 3) actions that are carried out between entities, connected by control relations (within company group), except the cases when the company group was created without obtaining permission of the Antimonopoly Committee of Ukraine if it was needed;
- 4) the acquisition of control over the entity or its part, including through the right management and disposal its property, by insolvency officer, official or officer of public authority;
- 5) the acquisition by the bank or other financial institution of assets in the form of a single property complex, shares (stocks, units) of the entity in case if such acquisition is provided for in the restructuring plan approved in accordance with the Law of Ukraine "On Financial Restructuring" by collection of a mortgage or other security encumbrance, subject to their subsequent alienation to economic entities not related to the control relations with this bank or with this financial institution within two years from the date of obtaining such ownership.

According to the Article 24 of the Law of Ukraine “On Protection of Economic Competition” for the following concentrations the prior obtaining of the Committee permit is required:

- total assets or total sales goods of participants of concentration, taking into account the relationship of control, in the last financial year, including abroad, exceeds amount equivalent to 30 million euros, and the cost (total value) of assets or volume (total volume) of goods in Ukraine of not less than two members concentration, taking into account the relationship of control, exceeds the amount equivalent to 4 million euros each; or
- total assets or total sales goods in Ukraine of the entity regarding which acquired control or entity, assets, shares (stocks, units) of which acquired, or at least one of the founders of the entity being created, taking into account the relationship of control, the last fiscal year exceeds the amount equivalent to 8 million Euro, and the total sales of goods of at least one other participant of the concentration, taking into account the relationship of control at last fiscal year, including abroad, exceeds the amount equivalent to 150 million euros.

It should be noted that the abovementioned financial figures are calculated taking into account the relations of control – i.e. the financial figures of not a single entity is taken into account, but the total financial figures of the companies connected by the control relations (i.e., total figures of the company group).

Due to this it is important to note that the definition of control is set by the Article 1 of the Law of Ukraine “On Protection of Economic

Competition". The control is defined as "decisive influence of one or more related legal entities and/or individuals on the economic activity of other entity or part thereof either directly or through other persons, in particular by: the right to own or use of all assets or a significant part of them; right, which provides a decisive influence on the formation, the results voting and decision making of the management of the entity; conclusion of agreements and contracts which allow to determine terms of economic activity, to give binding instructions or serve as the governing body of the entity; holding the position of the head, deputy head of Supervisory Board, the Board, other supervisory or executive authority of the entity by the person who already holds one or several of these positions in other entities; occupation of more than half the posts of members of the Supervisory Board, Board, other supervisory or executive bodies of entities by persons that already hold one or more of these positions in another entity. Related are considered legal entities and/or individuals who jointly or in coordination conduct economic activity, including jointly or in coordination influence on the economic activity of other entity. Specifically, as related individuals considered those who are spouses, parents and children, brothers and (or) sisters."

The Committee considers that the companies are bounded by relations of control in cases:

- 1) ownership of shares (stocks, units) in the amount of 50% or more (including the joint ownership by several persons which in turn are bounded by relations of control);
- 2) the combination of one person holds the position of a sole director or deputy director of the legal entity, head or deputy head of the collective executive, controlling, auditing body (Chairman of the Board, Chairman of the

Audit Committee, Chairman of the Board of Directors, etc. in several companies;

- 3) same persons hold more than half of the posts in the collective executive, control, auditing bodies in several entities;
- 4) person has the right to receive more than 50% of the profits of the company, regardless of the nature of such a right;
- 5) person has the right to appoint the head of the legal entity or the chairman of the collective executive, controlling, auditing body, regardless of the nature of such a right;
- 6) several persons jointly have the rights or powers listed in it. 1-5 above.

On 01.11.2018 AMCU have adopted the Methodical Recommendations on application of term “control”. This document explained typical examples of possible control relations which may arise on practice.

Among other it should be noted that Recommendations do include “positive” type of control (where the decision or action of the controller is necessary to exercise control) and “negative” type of control (where the person cannot solely make the necessary controlling decision but at the same time it has the power to block any such decision of other controllers or such decision cannot be made without this person). As an example of the “negative” control provided a situation where a person has 50% of the shares in the company while other 50% is divided between other shareholders. The person cannot solely make a controlling decision (it lacks the votes), but at the same time other shareholders cannot make any decision without the person. Thus, it is obvious that the position of the person will be taken into account and the person in such way

may exercise its controlling influence.

Other important provision of the Recommendations is a clear statement that franchising agreement normally does not establish control relations between the parties. The reason for this is that normally such agreement while set number of rules for the franchisee the latter conduct business activity on its own risk.

At the same time Recommendations do include the possibility of establishing control due to the licensing agreement – when corresponding activity is an exclusive activity of the company being controlled and the agreement is long-term or termless.

The procedure of application for the permit is set by the Regulation on the procedure of submission and consideration of applications for prior permission of the Antimonopoly Committee of Ukraine for concentration of the entities (Regulations on concentration), approved by the Order of the Antimonopoly Committee of 19.02.2002 № 33-p.

The participants of concentration also may apply to the Committee for receiving the preliminary conclusions on whether the planned concentration require the permit.

The Regulations sets that the application may be considered according to the simplified procedure. The simplified procedure may be used in cases:

- only one participant of the concentration operates in Ukraine;
- total market share of participants of concentration on one the same product market does not exceed 15 percent;
- share or total share of participants of concentration does

not exceed 20 percent of the commodity markets, which sold products (goods, works, services) without the purchase or sale of which any economic activity of participant to the concentration is not possible.

The application is considered as received for consideration after 15 days after submission. During this time the Committee studies the application regarding the providing of all information and absence of the reasons which do not allow the consideration of the application.

The term for consideration of the application is one month from the moment of its accepting. In case of applying for preliminary conclusions and obtaining the permit the term for consideration is one month from the moment the application was submitted to the Committee. When obtaining permit according to the simplified procedure the term for consideration is 35 days from the moment the application was submitted to the Committee.

The application should contain:

- 1) name of the body to which the application is made;
- 2) reference to the relevant legal act (paragraph part article), which sets the requirement to apply to the Committee;
- 3) the name, details (postal and email addresses, phone, fax) of the applicant and the participants of the concentration;
- 4) surname, name, patronymic, contact telephone numbers, postal and email addresses of officials (managers) responsible for the application, representatives of the applicant;

- 5) description of the contents of concentration;
- 6) list of documents and information attached to the application, stating the documents or parts of documents or information that contain classified information.

The Regulations also establish the requirement to the application submitted according to the simplified procedure, which is set in Annex 4 to the Regulations.

5. UNFAIR COMPETITION



The regulation regarding the unfair competition consists of two main legislative acts – the Law of Ukraine “On Protection of Economic Competition”, which established the procedural order of consideration of statements and case proceedings, and the Law of Ukraine “On Protection Against Unfair Competition”, which established the basic principles of legal regulation of these relations, including the types of misconducts.

The legislation defines the following types of unfair competition (formal composition of misconducts):

- 1) improper use of name, commercial (brand) name, trademark (a trademark for goods and services), advertising materials, product packaging design and periodicals, other indications or use of similar designations (Article 4 of the Law of Ukraine “On Protection Against Unfair Competition”);
- 2) introduction of another entity’s goods under own trademark into commercial circulation (Article 5 of the mentioned Law);

- 3) reproduction (copying) of appearance of another entity's product and its introduction into commercial circulation without explicit indication of the manufacturer of the copies which resulted or may result in mixing of commercial activity (Article 6 of the mentioned Law);
- 4) comparative advertising (Article 7 of the mentioned Law);
- 5) discrediting – dissemination of untrue information regarding the company or its goods, services (Article 8 of the mentioned Law);
- 6) inducing a boycott of an entity, which includes including the termination of the concluded agreements, refuse to conclude agreement, unfulfillment of obligations under the agreement (Article 10 of the mentioned Law);
- 7) inducing supplier to discriminate a buyer (customer), which includes the application of a discriminative conditions of purchase or sale of the goods (Article 11 of the mentioned Law);
- 8) bribing an employee or an officer of a supplier or a buyer (Articles 13 and 14 of the mentioned Law);
- 9) obtaining the unlawful advantage in competition, which is confirmed by the relevant decision of the authority body (Article 15 of the mentioned Law)
- 10) improper gathering, usage or disclosure of trade secrets (Articles 16-19 of the mentioned Law);
- 11) spreading of misleading information (particularly in advertisements) regarding goods and services (Article 15¹ of the mentioned Law).

It should be noted that the Law of Ukraine “On Protection Against Unfair Competition” does not establish an exclusive

list of violations. According to the Article 1 of the Law the unfair competition is defined as any action in competition in violation of the trade and other fair customs in business activity.

Thus, theoretically, such unfair action of the competitor, which is not listed in the law specifically, may also be considered as unfair competition by the Antimonopoly Committee of Ukraine. At the same time, on practice such cases are very rare and extremely hard to prove.

The most common (not including the dissemination of misleading information) violations among listed are improper use of trademarks and copying goods' appearance.

Improper use of trademarks lies in using name, trade name or brand name, trademarks (signs for goods and services), advertising materials, package design of goods and periodicals, other indications without permission (consent) of business entity, which earlier started to use them or similar to them indications in economic activity what led or may lead to confusion with activity of this business entity.

Copying goods' outward appearance is replication of outward appearance of goods belonging to other business entity and commercialization of them without explicitly indicating the manufacturer of copies, which may lead to confusion with activities of the other business entity.

It should be noted that the above violations are very similar in nature to the violations of intellectual property. In particular, trade name and trademark for goods and services are usually the intellectual property of the company and often their misuse by others is prosecuted through the mechanisms provided by legislation in the sphere of protection of intellectual property.

Similarly, outward appearance is often protected as an object of intellectual property by patents and/or design inventions.

However, the scope of regulation of protection against unfair competition has its distinctions. In particular, the most significant distinction is the fact that Article 4 of the Law of Ukraine “On Protection Against Unfair Competition” does not link the possibility of legal protection with the fact of filing the application for registration or obtaining a certificate for sign of goods and services. The only criterion used for identifying legitimate user of indication or outward appearance of goods is superiority of its application by the entity.

In addition, the scope of the legislation on protection against unfair competition is bigger – since protection is provided not only to registered trademarks of goods and services, but to any indication that is used by the company.

At the same time, it should be understood that the primary purpose and function of the Committee is protection of competition on the market, but not the protection of the rights of the individual. Therefore, the company is unable to claim through the Antimonopoly Committee of Ukraine to obtain reimbursements or other compensation from offender.

However, the important tool that the Antimonopoly Committee of Ukraine can use is the right to withdraw from commerce the goods containing illegally used indication or being copies. This prevents the further spread of infringing goods. Thus, applying to the Committee can be effective tool of protection against such unlawful actions of competitors.

The fine for the unfair competition is set by the Article 52 of the Law of Ukraine “On Protection of Economic Competition” and amounts up to the 5 % of the total sales of the goods (services) of the

company (company group) for the year previous to the year in which the company is fined.

According to the Article 27 of the Law of Ukraine “On Protection of Economic Competition” any person whose rights were violated in result of a misconduct is entitled to turn to the Antimonopoly Committee of Ukraine for protection of his/her rights within a 6-month period from the time when he/she became aware of such breach. In case of omission of this term the Committee shall refuse to accept the statement, unless such person proves that such omission occurred due to a reasonable cause.

Legislation does not establish a mandatory application form. The AMCU’s website provides a template statement, which is recommended by the Committee to speed up the case proceedings, but filing application in the other form will not impede its consideration by the Committee.

However, the Rules of consideration of statements and cases regarding violation of legislation on protection of economic competition (the Rules of proceedings) adopted by the Antimonopoly Committee of Ukraine of 19 April 1994, № 5, established a number of mandatory requirements for information to be contained in the statement. Thus, during preparation of a statement it is necessary to specify:

- name of a public authority, to which the statement is being filed to (the Committee or a relevant regional office of the Committee);
- name of the legal entity or name of the individual (surname, name and patronymic), who are the parties to the case (applicant and respondent), their location (for legal entities)

or place of residence (for individuals), other details of the parties, including mailing address and, if available, phone number (fax number, etc.), e-mail;

- contact name (for legal entities), phone number (fax number, etc.) and, if available, email;
- content of claims, including anticipated by the applicant decision of the Committee;
- circumstances in which an applicant justifies his/her claims, justification of violation of an applicant's rights in result of acts or omission of the respondent, stipulated by legislation as violation of legislation on protection of economic competition;
- information regarding appeals to any other government authorities, including courts, concerning the issues mentioned in the statement;
- a list of documents and other materials attached to the application.

Moreover, there are some other requirements and approaches in practice, non-compliance with which shall not lead to a refusal to accept a statement, but can significantly extend the period of its consideration.

Thus, it is necessary to carefully approach the substantiation of any breach of rights. In practice, most applicants, whose rights have been breached, are competitors, suppliers or buyers of an offender, and it is necessary to explain during filing of a statement in what way the applicant's rights have been breached, and there is a need to indicate the size and nature of the incurred damages. In particular, as a justification the information on the reduction of the

applicant's sales of goods, the applicant's shrinking market share in the corresponding increase in the share of the offender, the information about claims against the applicant or negative feedback of the buyers of counterfeit goods, which respectively affect consumer perception of the applicant's trade mark and so on can be used. Of course, information about the damage should be filed together with appropriate calculations, supporting documents, expert reports, but the fact of damage should be directly related to the unlawful actions of the offender and should not be tied to other factors.

In addition, submission of a statement on behalf of other persons shall require producing evidence of violation of the rights, as the Committee does not accept such persons as potential applicants.

The necessity to substantiate these circumstances is due to various procedural statuses of a statement, and it depends on the existence of the violated right of the person who applied. In case of a breach, such person is acknowledged as an applicant within the meaning of Article 39 of Law of Ukraine "On Protection of Economic Competition" and has the status of the party to the case of violation of legislation on protection of economic competition. Accordingly, as a party to the case the applicant has the right to examine the case file (except for information with restricted access and information disclosure of which could inflict harm to other party to the case), produce evidence and explanations in the case, etc. If existence of a violated right is not proved, the person who applied is not recognized as the party to the case and does not receive appropriate procedural rights.

Another important element of a statement, to which attention must be paid to, is providing evidence of a violation. Although in theory it is possible only to outline circumstances and

offender's actions, which, according to the applicant's belief, substantiate unfair competition, failure to provide the Committee with relevant evidence may cause rejection of the statement due to insufficient substantiation. Thus, if a violation is an unlawful use of names or copying of a product, it is necessary to provide a certificate of registration of trademarks, photographs, documents, packaging designs, etc., which confirm the fact of illegal use or copying. If the appearance is not copied entirely, it would be advisable to provide an expert opinion, which confirms such similarity of signs or goods that they can be confused one for another.

Producing the maximum number of evidence and information that substantiates a violation shall not only provide a quick consideration of a statement, but shall also help the Committee during investigation and prosecution of an offender.

Another important element that should be indicated in a statement is information regarding application to other authorities concerning issues raised in the statement. In practice, applicants indicate only Ukrainian authorities to which they had earlier applied to. However, if an offender committed similar or corresponding actions in several countries and there were appeals to foreign governments regarding these actions – especially to the competition departments, it is highly recommended to indicate such appeals and, if possible, provide copies of relevant decisions.

The Antimonopoly Committee of Ukraine carries out very careful probes and focuses on the practice of competition authorities of other countries, especially those of the European states. Therefore, the availability of information about the decision adopted against the offender for similar actions in another country shall become an additional argument for justifying a violation as a whole.

6. MISLEADING INFORMATION



One of the most significant and special cases in the field of protection against unfair competition is the one related to the liability of business entities for spreading of misleading information.

The most cases considered by the Antimonopoly Committee of Ukraine usually refer to such violations. As a rule, consideration of these cases results to the largest fines imposed due to violations of legislation on protection against unfair competition.

The reasons because of which such a situation occurs are the following. First of all, this field is the largest one to regulate. Secondly, the majority of business entities still do not understand clearly the requirements of legislation related to the advertising and promotional activity.

According to Article 15¹ of the Law of Ukraine “On Protection Against Unfair Competition” spreading of misleading information means giving information by business entity directly or through another person to one, or several, or indefinite number of persons, including in advertising, incomplete, inaccurate or false

statements, in particular, at the result of chosen method of their presentation, certain facts concealment, or indistinct formulations that have affected or shall affect these persons to purchase, to order, or to realize (to sell, to deliver, to execute, to supply) products, works, services of such a business entity.

Misleading information includes statements that:

- 1) contain incomplete, inaccurate or false data related to the origin of the product, manufacturer, seller, manufacture method, source and method of purchasing, realization, quantity, consumer values, quality, package contents, validity, standards, specifications, features of products' realization, operations, services, price and promotional events on them, as well as the essential terms of agreement;
- 2) contain incomplete, inaccurate or false data related to financial standing of the entity or its economic activity;
- 3) refer to authorities and rights that are not enjoyed, or relationships that are not involved in;
- 4) refer to production output, purchase, sale or supply of products, works and services that were not performed at the day of spreading information.

Unfortunately, the provisions contained in Article 15¹ of the Law of Ukraine "On Protection Against Unfair Competition" are fairly subjective that is why usually in practice especially while creating promotional material the question related to whether the advertising video, announcement or other types of advertisements correspond to the legislation on protection against unfair competition.

It should be noted that the Antimonopoly Committee of Ukraine takes up a strict position related to the interpretation of the provisions of the stated Article. In particular, the Committee assumes that any promotional information shall be absolutely true (the specifications of good listed on it shall correspond to reality), accurate (exaggeration, or using other artistic device are allowed in the advertising only if the consumers do not experience misunderstandings related to the characteristics of the good or terms for provision of the services) and full (advertising shall not generate misunderstandings related to the specification of goods or terms for provision of the services through concealment of information, or failure to provide the consumer with important information).

The fine for the spreading of the misleading information is the same as for other cases of unfair competition and amounts up to the 5% of the total sales of the goods (services) of the company (company group) for the year previous to the year in which the company is fined.

Taking into account the court practice based on the results of appealing decisions of the Antimonopoly Committee of Ukraine in cases related to the violation of Article 15¹ of the Law of Ukraine “On Protection Against Unfair Competition” it is possible to define a number of key principles that the advertising or information message of the business entity should comply with in order to avoid risks of bringing to responsibility:

- using clearly defined statements in advertisement shall be proved by the respective documents or information (researches, experts’ opinions, technical specifications of production of goods etc.);

- the advertisement should not hide certain essential characteristics of a good, potential for its use and/or purchase terms as well as other information about the good that will obviously influence on consumer's choice of such a good;
- clarifying information, remarks should be placed in the advertisement in a way that will not make it difficult for the customers to read or to perceive such information (it is forbidden to use consciously small print or color making it hard to read, to increase voice speed during radio advertisement etc.);
- marking of product should contain all information stipulated by the legislation; during the promotional event for the product its main conditions, in particular, its term should be placed at the product's package;
- general impression about the advertisement should not provoke customer's misunderstanding about the product or its characteristics (for instance, placing the image of fruits at the package of the food product (juice, yogurt) that were not used for making this product may create a customer's impression that they were but this will not correspond to the reality; moreover, the fact that the producer does not refer to the existence of such fruits in the product does not release this person from the liability).

As an example, some illustrative decisions of AMCU on advertising can be given. The company "Kyiv BKK" had a designation on its products "Kyiv BKK 1907". At the same time the company was

created in 2016. AMCU had decided that such designation on the products may lead to misleading the consumers and have ordered to remove the designation.

In 2018 the AMCU had a number of cases regarding the misleading information on the labels of alcoholic production made by several companies. In particular the label had contained writing "WHYSKEY" while the product itself was not whiskey. AMCU had fined the companies in the amount from 260 to 450 thousand hryvnas.

Another interesting case was regarding the misleading information placed on the product website. In particular, on the product website it was written that liqueur "O'Daylis Original" was Ireland liqueur. At the same time the product was produced in Ukraine and did not contain any components linking its to Ireland except for having the component "fragrance Irish". The company was fined for 3 350 thousand hryvnas.

Despite the certain principles to comply with all regulations and requirements of the legislation as well as to follow all informational and promotion materials of enough subjective position of the Antimonopoly Committee of Ukraine, this issue is still very important and complicated for all business entities.

In order to avoid any risks of bringing to liability the business entity may address to the Antimonopoly Committee of Ukraine in order to obtain its conclusion with recommendations related to its actions compliance to the provisions of Article 15¹ of the Law of Ukraine "On Protection Against Unfair Competition".

In order to obtain such a conclusion it is necessary to file an application to the Antimonopoly Committee of Ukraine. Such an application shall include the following information:

- the name of the authority to which the application is filed;
- the naming (for legal entities), or name (first name, second name, patronymic for individuals) of the business entity (applicant) its residence place (for individuals), as well as other information;
- the description of the action related to which the applicant addressed to the authority;
- document to prove the payment of charges for application to be filed (transfer order marked by the bank, or receipt)
- the list of documents and records that are enclosed to the application.

While drafting application, documents and other materials to prove described in the application circumstances it is necessary to take into account that the recommendations are provided only on the basis of the information contained in the application and documents enclosed to it without conducting additional researches with attraction of third persons. The Committee's conclusion depends on reasonable evidence contained in the documents enclosed to the application to prove that the spreading information is true, full and accurate and is based on real, documentary proved circumstances.

So, it is necessary to enclose all documents and other materials available for the applicant to prove described in the application circumstances, in particular documentary confirmation of the information to be true, full and accurate.

The term for the Antimonopoly Committee of Ukraine or its administrative board to consider the application is 30 calendar days started from the day when the application was filed.

At the result of the Antimonopoly Committee of Ukraine consideration the following conclusions are made:

- the actions of the business entity described in the application include or may include features of violation of legislation provided by Article 15¹ of the Law of Ukraine “On Protection Against Unfair Competition”;
- the actions of the business entity described in the application do not include or may not include features of violation of legislation provided by Article 15¹ of the Law of Ukraine “On Protection Against Unfair Competition”;
- the applicant did not provide with enough information to make a clear conclusion related to the existence/lack of features of violation of legislation provided by Article 15¹ of the Law of Ukraine “On Protection Against Unfair Competition” described in the application.

7. LIABILITY FOR ANTITRUST LEGISLATION BREACH



The liability for violation of the antimonopoly legislation is set by the Law of Ukraine “On Protection of Economic Competition”.

The Article 50 of the Law sets the following types of violations:

- 1) anticompetitive concerted actions;
- 2) abuse of monopoly power;
- 3) various anticompetitive actions of the authorities, local government, bodies of administrative management and control;
- 4) unfulfillment of the AMCU decision;
- 5) implementation of concerted action which may be allowed without the AMCU permit;

- 6) violation of conditions of the permit granted for concerted action which may be allowed;
- 7) restricting and discriminating activity of the associations;
- 8) violation of the provisions agreed with the Antimonopoly Committee Ukraine chartered documents of the entity created as a result of the concentration, if this results in restriction of competition;
- 9) concentration without the permission of Antimonopoly Committee of Ukraine;
- 10) non provision or provision of false, misleading, not full information in response to the AMCU request;
- 11) creation of obstacles to employees of the Antimonopoly Committee Ukraine, its territorial branches in conducting inspections inspection, seizure or arrest imposing on property documents objects or other media;
- 12) recommending to commit violations of legislation on protection of economic competition or facilitate the commission of such violations;
- 13) restrictions in economic activity in response to the fact that he turned to Antimonopoly Committee of Ukraine and its territorial office a statement on the violation of legislation on protection of economic competition.

The fines for violation are established by the Article 52 of the Law of Ukraine "On Protection of Economic Competition". There are three group of fines depending on the severity of the violation:

- up to 10% of the of the total sales of the goods (services) of the company (company group) for the year previous to

the year in which the company is fined – for anticompetitive concerted actions, abuse of monopoly power and unfulfillment of the AMCU decision; additionally in the case of illegal profits that exceeds the mention 10% fine is applied in the amount up to the triple size of the illegally obtained profits;

- up to 5 % of the of the total sales of the goods (services) of the company (company group) for the year previous to the year in which the company is fined – for implementation of concerted action which may be allowed without the AMCU permit, violation of conditions of the permit granted for concerted action which may be allowed, restricting and discriminating activity of the associations, concentration without the permission of Antimonopoly Committee of Ukraine.
- up to 5 % of the of the total sales of the goods (services) of the company (company group) for the year previous to the year in which the company is fined – for other violations like not providing or providing of false information to AMCU.

It should be noted that according to the provisions of the law the total sales may be calculated not only for the actual entity who participated in violation, but for the whole company group which the entity is part of.

The Law of Ukraine “On Protection of Economic Competition” provides a very wide boundaries in which the Committee may apply the actual fine – from 0 and up to several hundred million. This has led to several scandals in regard to the some of the AMCU decisions and the number of fines.

The latest biggest fine made by AMCU was the cumulative fine for the tabaco producers in the total amount of approximately 6.5 billion hryvnas for alleged cartel on the tabaco distribution market. On this moment this is the biggest fine in the AMCU history. At the same time normally the fines of AMCU rarely exceed 10 million hryvnas even for significant violations.

The drastic difference between the common amount of the fines imposed by the AMCU and the fines in such cases significantly lowered the AMCU reputation. The accusations of non-transparency, political involvement etc. were made.

Such situation arose first of all due to the fact that AMCU historically did not described in its decisions the justification for the particular amount of fine.

To resolve this problem in 2015 AMCU adopted the Recommendations which established the approach for calculation of the fines. Additionally, in 2016 Recommendations were revised by the result of their practical application.

The Recommendations of 09.08.2016 No. 39-p establish a detailed description of the Committee approach for fine calculations in each case.

In particular, the Recommendations sets the fine is calculated by firstly calculation the basic amount of fine and then its correction in case of any mitigating or aggravating circumstances.

The basic amount of fine is calculated as follows: the total sales of the goods on which market the violation was made are multiplied by the percentage set for the particular violation (depending on its severity) and then additionally by applying the special coefficient, which is determined by the influence of the violation on adjacent markets, the category

of the consumers which were affected and the income level for such activity.

The percentage which is the total sales multiplied on is amount from 15 (for the heavy violations) to 5 percent of the sale. For special cases like not providing or providing false information the fine is set as a flat fee depending on the circumstances of the case.

The Regulation also establish the list of mitigating and aggravating circumstances according to which the basic amount of fine is corrected.

In particular, the basic amount of fine is increased to 50 percent in case of the following aggravating circumstances:

- initiating actions (inaction), which recognized as violation and/or managed them (regarding anticompetitive concerted actions);
- creating obstacles in cases investigation;
- refusal to cooperate with the Committee.

The basic amount of the fine is increased to twice in the case of repeated violation in respect of which the bodies of the Committee already made a decision.

The basic amount of the fine is reduced to 50 per cent in case of the following mitigating circumstances:

- termination of the violation prior to the decision of the Committee on violation is made;
- damages caused by the violation is compensated or effects eliminated in other ways prior to the decision of the Committee on violation is made;

- eliminating the conditions that contributed to the commission of violations;
- the actual failure of the participant concerted actions and the availability of evidence that the entity were actually competing in the market during the time duration of the violation;
- cooperation in the proceedings with the Committee that helped clarify the circumstances of the case, including the identification of facts, information on which authorities did not ask the Committee or identify other violations of legislation on protection of economic competition, including those committed by others;
- committing violations due to the influence of the executive authorities, local government bodies of administrative management and control or entity economically dependent on who was the perpetrator;
- applying to the AMCU for the permit for concentration prior to the decision of the Committee on violation is made in case of violation is the concentration without the permit.

The Law of Ukraine “On Protection of Economic Competition” according to the Article 6 establishes the leniency procedure. The delayed procedure for submitting the application is set by the Regulation on submission of applications to the Antimonopoly Committee of Ukraine regarding the exemption from liability for a breach of legislation on economic competition protection under paragraph 1 of Article 50 of the Law of Ukraine “On Protection of Economic Competition” (Regulation on exemption from liability), approved by the Regulation of the AMCU of 25.06.2012 № 399-p.

The Regulation on exemption from liability set two main bases required for exemption:

- 1) notification of the AMCU about the cartel before the other members of the cartel;
- 2) provide information that is essential to the case.

At the same time the Regulation also establishes that exemption from liability is not granted if the applicant had failed to take effective measures to cease its participation in concerted actions after notification to the Committee. The applicant is deemed to cease its participation in the anticompetitive concerted actions, if his involvement after their notification to the Committee is due to the need to obtain information regarding the concerted actions. The limits and terms of such participation should be agreed by the Committee in writing.

In any case the applicant is not exempt from liability in case:

- he initiated anticompetitive concerted actions;
- managed concerted actions;
- did not provide all the evidence or information in relation committing concerted actions, which he knew or could easily get.

According to the Regulation the application for the exemption should contain:

- 1) full name/first name, surname, address/place of residence and other details of the applicant;

- 2) information about all known members of concerted actions;
- 3) the time from which the applicant participated in anticompetitive concerted actions;
- 4) details of anticompetitive concerted actions (purpose and content of the concerted actions (price fixing, market sharing, etc.), in regards to which goods (services), geographical distribution of concerted actions, date, place and form of contacts aimed at coordination of competitive behavior, and people who engage in these contacts, actions by which occurred or could occur coordination of competitive behavior, other information about the concerted actions);
- 5) information that may prove anticompetitive concerted actions;
- 6) information regarding the absence of circumstances which do not allow the application of the leniency;
- 7) list of documents attached to the application.

The Regulation also establishes a special procedure for the cases when the entity would like to receive the exemption but does not have all the information available on the moment of submitting of the application.

Such person may apply to the AMCU to receive the special letter-marker, which confirms that he was the first who applied for the leniency. From the moment of receiving the letter-marker the person has 30 days to provide all the missing information required to receive the exemption.

It should be noted that the Regulation has several issues that limits its application on practice. In particular, only the first application will receive exemption. Contrary to the EU and USA prac-

tice, there are no established mechanism to reduce the maximum size of penalties for entities that have applied to AMCU second, third, etc.

Another problem is the question of civil liability of the persons who have received the release for leniency procedure. According to world practice, the person who received the release for leniency procedure, reimburse only the actual amount of damage due to the anticompetitive concerted actions. However, Article 55 of the Law of Ukraine “On Protection of Economic Competition” establishes that in the event of damage due to the anticompetitive concerted actions of the person, and have no provision which lowers this amount for the person received exemption according to the leniency procedure.

The decisions of Committee may be appealed to the court. The Article 60 of the Law of Ukraine “On Protection of Economic Competition” sets that the decisions appealed to the commercial courts within two months from the date of receiving of the corresponding decision by the entity. The term for submission of the appeal cannot be renewed.

**LAW OF UKRAINE
ON THE ANTIMONOPOLY COMMITTEE OF UKRAINE***

**SECTION I.
GENERAL PROVISIONS**

Article 1. The Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine is the state agency vested with the special status that was created to ensure the state protection of competition between entrepreneurs and in the area of state procurements.

The specifics of the special status granted to the Antimonopoly Committee of Ukraine stem from its objectives and bodies of state power, and from the role it plays in shaping the competition policy as determined by this Law and legislation acts. These specifics include, inter alia, special procedure of appointing and dismissing the Chairman of the Antimonopoly Committee of Ukraine, his deputies, state commissioners of the Antimonopoly Committee of Ukraine, heads of the territorial offices of the Antimonopoly Committee of Ukraine, specific procedural principles underpinning the activities performed by the Antimonopoly Committee of Ukraine, social benefits, protection of personal and property rights of the Antimonopoly

* convenience translation of the Law is made as of December 01, 2020.

Committee of Ukraine employees similar to personal and property rights provided the law enforcement agencies and labour remuneration conditions.

Article 2. Controllability, accountability and transparency of the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine is controlled by the President of Ukraine and accounts before the Verkhovna Rada (Parliament) of Ukraine.

The Antimonopoly Committee of Ukraine annually submits to the Verkhovna Rada (Parliament) of Ukraine the report about its past activities.

The Antimonopoly Committee of Ukraine publishes information and makes information available upon request in accordance with the Law of Ukraine “On Access to Public Information”.

Article 3. Tasks of the Antimonopoly Committee of Ukraine

The basic tasks of the Antimonopoly Committee of Ukraine shall be to participate in shaping and implementation of the competition policy regarding:

- 1) the state supervision over compliance with legislation on protection of economic competition based on the principles of the economic entities’ equality before the law and priority of consumer rights, forestalling, detecting and terminating violations of the legislation on protection of economic competition;
- 2) exercising control over economic concentration and concerted practices of economic entities and their

compliance with the requirements of the legislation on protection of economic competition applicable to regulation of the prices (tariffs) for the goods manufactured (sold) by natural monopoly entities;

- 4) methodological support of legislation on protection of economic competition;
- 5) exercising control over competition environment and protection of competition in public procurements;
- 6) monitoring State aid to economic entities and controlling the admissibility of such aid for competition.

Article 4. Basic Principles of Activities of the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine shall build its activities in accordance with the following principles:

- legitimacy;
- publicity;
- the protection of rights of economic entities on the basis of both the equality of economic entities in terms of law and the priority of consumer rights.

Article 5. Legislation Concerning the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine shall perform its activities in accordance with the Constitution of Ukraine, the Law of Ukraine “On Protection of Economic Competition”, the Law of Ukraine “On Protection Against Unfair Competition”, “On State Aid to Economic Entities”, the present Law, other laws

and other regulatory and legal acts adopted in accordance with these laws.

If an international treaty with respect to which legally binding nature the Verkhovna Rada (Parliament) of Ukraine gave its consent fixes rules different from those contained by the present Law, the rules of the international treaty shall be applied.

In this Law the respective terms are understood in accordance with interpretation provided by the Law of Ukraine “On Protection of Economic Competition”.

In this Law the term “legislation on protection of economic competition” shall be used in the meaning of the term provided by the article 3 of the Law of Ukraine “On Protection of Economic Competition”

SECTION II. STRUCTURE, COMPETENCE, AND ORGANISATION OF ACTIVITIES OF THE ANTIMONOPOLY COMMITTEE OF UKRAINE

Article 6. System of Bodies of the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine shall be established to include the Chairman and eight State Commissioners.

The Chairman of the Antimonopoly Committee of Ukraine has the First Deputy and the Deputy Chairman of the Antimonopoly Committee of Ukraine who are appointed from among the State Commissioners. If the Antimonopoly Committee of Ukraine needs to perform individual tasks assigned by the President of Ukraine the

Antimonopoly Committee of Ukraine may appoint additionally the Deputy Chairman of the Antimonopoly Committee of Ukraine.

The Antimonopoly Committee of Ukraine creates territorial offices and if necessary, may decide to reorganize or liquidate such offices.

{Part four of the article 6 is excluded pursuant to the Law of Ukraine № 985-V dated 24.04.2007}

The system of bodies of the Antimonopoly Committee of Ukraine includes the Antimonopoly Committee of Ukraine and its territorial offices and is headed by the Chairman of the Committee.

The Antimonopoly Committee of Ukraine, its territorial offices shall be legal persons which have settlement and deposit accounts in branches of banks, seals with the image of the State Emblem and their name.

The Antimonopoly Committee of Ukraine, administrative boards of the Antimonopoly Committee of Ukraine, state commissioners of the Antimonopoly Committee of Ukraine and administrative boards of the territorial offices of the Antimonopoly Committee of Ukraine are the structural bodies of the Antimonopoly Committee of Ukraine.

Article 7. Powers of the Antimonopoly Committee of Ukraine

When exercising control over compliance with the legislation on protection of economic competition the Antimonopoly Committee of Ukraine has the powers to perform the following:

- 1) consider complaints and cases arising in connection with violations of the legislation on protection of economic

competition and hold investigations into these complaints and cases;

- 2) adopt orders and decisions on complaints and cases as provided for by the legislation on protection of economic competition, verify and revise decisions on cases, submit findings regarding classification of acts in conformity with legislation on protection of economic competition;
- 3) consider administrative offense cases, adopt decisions and verify their legitimacy and relevancy;
- 4) inspect economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control for their compliance with the requirements of the legislation on protection of economic competition and during inquiries into complaints and cases regarding the violation of the legislation on protection of economic competition;
- 5) require from the economic entities, associations, bodies of state power, self-government bodies, bodies of administrative and economic government and control, their officials and employees, other natural persons and legal entities to provide information, including the one with restricted access when considering applications and cases concerning violation of the legislation on protection of economic competition, conducting verifications and in other cases provided for by the law;
- 6) assign expert evaluation and an expert from among persons possessing necessary knowledge to deliver expert findings;

- 7) inspect the offices and transportation vehicles of the economic entities that are legal entities and seize or arrest objects, documents or other data carriers that may be used as an evidence with regard to a case under consideration regardless of its whereabouts in cases and in accordance with procedures prescribed by the law;
- 8) in case of any interference with actions that the employees of the Antimonopoly Committee of Ukraine perform in conformity with items 4, 5 and 7 of this part they shall be entitled to apply for intervention of the enforcement agencies to take necessary legal measures to overcome such interference;
- 9) engage employees of the internal affair agencies, customs and other law enforcement agencies to facilitate inquiries into the cases on violation of the legislation on protection of economic competition, in particular during investigations;
- 10) enlist the specialists of the bodies of state power, bodies of local self-government, enterprises, institutions, organizations into verifications as agreed upon with their supervisory officials, or with the deputies of local Radas (local councils) with their consent;
- 11) perform market research, define the limits of the product market and the share, including monopoly (predominant) share held by the economic entities in this market and adopt respective decisions (orders);
- 12) define availability or lack of control over economic entities or their parts and determine if a group of economic entities constitutes one economic entity;

- 13) present to the executive agencies, bodies of local self-government binding recommendations on cancellation of licenses, termination of transactions related to the foreign trade activities of the economic entities if they violate the legislation on protection of economic competition;
- 14) issue binding recommendations to the bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, economic entities, associations regarding termination of their activities or inactions that lead or may lead to violation of the legislation on protection of economic competition and recommendations regarding elimination of their causes and contributing conditions;
- 15) apply to the court with pleas, complaints and appeals related to administration of the legislation on protection of economic competition and with requests regarding submittal of information about litigation cases considered by these courts in conformity with legislation on protection of economic competition;
- 16) apply to and receive from the competent agencies of other states information it requires to exercise its powers;
- 17) provide to the competent agencies of other states information in cases and in accordance with procedures prescribed by the law;
- 17-1) exercise powers provided for by the Law of Ukraine “On Conducting Public Procurements” and the Law of Ukraine “On Public Procurements”;
- 18) exercise other powers provided for by the legislation on protection of economic competition and by the Law of

Ukraine “On Conducting Public Procurements” and the Law of Ukraine “On Public Procurements”.

When exercising control over concerted practices and concentration the Antimonopoly Committee of Ukraine shall have the following powers:

- 1) consider complaints and cases regarding issuance of authorization, findings and preliminary findings regarding concerted practices and concentrations and hold inquiries into these complaints and cases;
- 2) in accordance with the legislation on protection of economic competition adopt orders and decisions regarding complaints and cases about issuance of authorizations for a concerted practice, concentration, provide findings, preliminary findings regarding concerted practices and concentration, findings about classification of actions in conformity with legislation on protection of economic competition;
- 3) revise, verify decisions passed by the bodies of the Antimonopoly Committee of Ukraine within the limits of their jurisdiction;
- 4) authorize or prohibit concerted practices and concentration;
- 5) require from economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, their officials and employees, other natural persons and legal entities to provide information, including restricted information when considering applications and cases concerning violation

of the legislation on protection of economic competition, conducting verifications and in other cases provided for by the law;

- 6) exercise powers as provided for by items 6, 11, 12, 15 and 16 of part one of this article;
- 7) exercise other powers as provided for by the legislation on protection of economic competition.

When shaping and implementing competition policy, promoting competition, providing regulatory and methodological support of activities performed by the Antimonopoly Committee of Ukraine and applying the legislation on protection of economic competition the Antimonopoly Committee of Ukraine shall have the following powers:

- 1) require from of the economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, their officials any information, including restricted information that is necessary for market research as well as information about implementation of competition policy;
- 2) summarize and analyze information about implementation of regulations under the legislation on protection of economic competition concerning competition policy priorities;
- 3) participate in development and duly submit to the President of Ukraine and Cabinet of Ministers of Ukraine suggestions on laws and other regulatory legal acts concerning the issues of promoting competition, competition policy and

demonopolization of national economy, concur draft regulatory legal acts with the President of Ukraine, Cabinet of Ministers of Ukraine, central and local executive agencies, bodies of local self-government, bodies of administrative and economic government and control that may affect competition;

- 4) exercise powers as provided for by items 6, 11, 12 and 15 of part one of this article;
- 5) issue binding recommendations and offer to the state agencies, bodies of local self-government, institutions, organizations, economic entities, associations measures to restrict monopolism, promote entrepreneurship and competition, prevent violation of the legislation on protection of economic competition and terminate actions and omissions that may negatively affect competition;
- 6) interact with state agencies, bodies of local self-government, bodies of administrative and economic government and control, enterprises, institutions and organizations on issues related to promotion, support, protection of the economic competition and demonopolization of national economy;
- 7) summarize the practice of applying legislation on protection of economic competition, offer to respective state agencies suggestions on its perfection;
- 8) develop and implement measures to prevent violations of the legislation on protection of economic competition;
- 9) participate in development and submittal to the President of Ukraine and Cabinet of Ministers of Ukraine sugges-

- tions regarding draft regulatory legal acts in the sphere of competition policy, promotion and protection of competition and demonopolization of national economy;
- 10) jointly with other concerned state agencies develop and approve interdepartmental regulatory legal acts concerning promotion and protection of economic competition and demonopolization of national economy;
 - 11) adopt internal regulatory legal acts in form of orders concerning issues under its jurisdiction, in particular, those related to control over concerted practices and concentration, jurisdiction and consideration of complaints and cases related to concerted practices and concentration, violation of the legislation on protection of economic competition and organization of activities to be performed by the bodies of the Antimonopoly Committee;
 - 12) provide official interpretation of its own regulatory legal acts;
 - 13) provide clarifications on issues related to practices of applying the legislation on protection of economic competition;
 - 14) submit to the President of Ukraine, Cabinet of Ministers of Ukraine, National Bank of Ukraine suggestions and provide to bodies of state power, bodies of local self-government instructions on amendment of their regulatory legal acts that fail to conform to the legislation on protection of economic competition or such that may interfere with fair competition because of misinterpretations;
 - 15) establish administrative boards of the Antimonopoly Committee of Ukraine;

- 16) establish territorial offices and advisory bodies of the Antimonopoly Committee of Ukraine;
- 17) participate in development and implementation of international projects and programs and interact with international organizations, state agencies and non-governmental organizations of other states on issues pertaining to the jurisdiction of the Antimonopoly Committee of Ukraine;
- 18) publish internal printed materials, official editions (collections) of regulations related to legislation on protection of economic competition, maintain the Internet web-site;
- 19) exercise other powers as provided for by legislation on protection of economic competition by the Law of Ukraine "On Conducting Public Procurements" and the Law of Ukraine "On Public Procurements".

No other state agencies shall be authorized to exercise powers granted to the Antimonopoly Committee of Ukraine as per items 1-4 and 11 of part one, items 1, 2 and 4 of part two, items 11-13, 15 and 16 of part three of this article.

In the area of control over the eligibility of state aid for competition, the Antimonopoly Committee of Ukraine has the powers defined by the Law of Ukraine "On State Aid to Economic Entities".

{Article 8 is excluded corresponds pursuant to the Law of Ukraine № 1294-IV of 20.11.2003}

Article 9. Chairman of the Antimonopoly Committee of Ukraine

The Chairman of the Antimonopoly Committee of Ukraine shall be appointed and dismissed by the President of Ukraine by consent of the Verkhovna Rada (Parliament) of Ukraine.

The term of office of the Chairman of the Antimonopoly Committee of Ukraine shall be seven years. The Chairman of the Antimonopoly Committee of Ukraine shall not be appointed for more than two terms in succession.

After the expiration of the term of office the Chairman of the Antimonopoly Committee of Ukraine shall continue to fulfil his duties till a new Chairman has been appointed.

The Chairman of the Antimonopoly Committee of Ukraine may be dismissed if he commits a crime, and if it is impossible for him to fulfil the duties owing to the state of health. The Chairman of the Antimonopoly Committee of Ukraine shall have the right to submit his resignation to the President of Ukraine. The resignation of the Chairman of the Committee shall not entail laying down powers by the State Commissioners of the Antimonopoly Committee of Ukraine.

{Part five of the article 9 is excluded pursuant to the Law of Ukraine № 985-V of 24.04.2007}

The Chairman of the Antimonopoly Committee of Ukraine shall:

head the Antimonopoly Committee of Ukraine, direct its activities and chair the sessions held by the Antimonopoly Committee of Ukraine;

submit proposals, to the Prime Minister of Ukraine, concerning the appointment and dismissal of the First Deputy, Deputy Chairman

and the State Commissioners of the Antimonopoly Committee of Ukraine;

distribute duties among the First Deputy, Deputy Chairman and the State Commissioners of the Antimonopoly Committee of Ukraine; guide the activities of the territorial offices of the Antimonopoly Committee of Ukraine;

submit the estimate of incomes and expenditures of the Antimonopoly Committee of Ukraine and its territorial offices to the Antimonopoly Committee of Ukraine for approval;

be the manager of budget allocations for both maintaining the Antimonopoly Committee of Ukraine and securing its activities;

make the admission, transference and dismissal of officials of the Antimonopoly Committee of Ukraine and its territorial offices; shall take encouraging measures with respect to and shall impose disciplinary punishments on officials of the Committee and its territorial offices in accordance with law;

establish territorial offices within the estimate, temporary administrative boards of the Antimonopoly Committee of Ukraine for the examination of issues pertaining to the jurisdiction of the Antimonopoly Committee of Ukraine;

issue such orders, approve provisions, instructions and other acts that are binding for officials of the Antimonopoly Committee of Ukraine and its territorial offices;

represent the Antimonopoly Committee of Ukraine in its relations with bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, economic entities, private citizens and associations of entrepreneurs or private citizens and sign on behalf of the Antimonopoly Committee of Ukraine the interdepartmental regulatory legal acts;

be entitled to request any documents, including complaints and cases regarding the issuance of authorizations for concerted practices, concentration, violation of the legislation on protection of economic competition that are reviewed by the body of the Antimonopoly Committee of Ukraine or chairman of the Antimonopoly Committee of Ukraine territorial office if requested so by persons who participate in such cases or if recommended so by the Antimonopoly Committee of Ukraine bodies or by the chairman of its territorial offices or on its own initiative and transfer these documents for review to another body of the Antimonopoly Committee of Ukraine or to the head of the territorial offices of the Antimonopoly Committee of Ukraine with exception of complaints and cases referred to exclusive jurisdiction of the Antimonopoly Committee of Ukraine as the highest collegial body;

approve organizational structure of the Antimonopoly Committee of Ukraine;

approve the manning table and budgetary allocations of the Antimonopoly Committee of Ukraine and concur it with the respective central executive agency on financial issues as well as manning table and budgetary allocations of the territorial offices of the Antimonopoly Committee of Ukraine;

perform other actions provided for by the legislation concerning the Antimonopoly Committee of Ukraine.

The Chairman of the Antimonopoly Committee of Ukraine – by order of the Verkhovna Rada (Parliament) of Ukraine, at least once a year – shall report on activities of the Committee to the Verkhovna Rada (Parliament) of Ukraine.

The Chairman of the Antimonopoly Committee of Ukraine shall have the status of the State Commissioner provided for by the present Law.

The Chairman of the Antimonopoly Committee of Ukraine shall have the right to participate in the sessions held by the Cabinet of Ministers of Ukraine and have a deliberative vote.

Article 10. Deputy Chairmen of the Antimonopoly Committee of Ukraine

The First Deputy Chairman and the Deputy Chairman of the Antimonopoly Committee of Ukraine from among the State Commissioners shall be appointed at the recommendation of the Prime Minister of Ukraine which and dismissed by the President of Ukraine. The Prime-Minister of Ukraine shall submit his recommendations on appointment of the First Deputy and Deputy Chairman of the Antimonopoly Committee of Ukraine based on proposals made by the Chairman of the Antimonopoly Committee of Ukraine.

Term of office of the First Deputy and Deputy Chairman of the Antimonopoly Committee of Ukraine shall cease upon expiration of their powers as state commissioners or in conformity with of part two of the article 18 of this Law.

The First Deputy and Deputy Chairman of the Antimonopoly Committee of Ukraine shall:

- 1) coordinate and supervise the territorial offices of the Antimonopoly Committee of Ukraine, advisory bodies of the Antimonopoly Committee of Ukraine and institutions administered by the Antimonopoly Committee of Ukraine;
- 2) guide and supervise activities performed by their subordinate structural subdivisions;

- 3) administer legal support for structural subdivisions of the Antimonopoly Committee of Ukraine;
- 4) ensure coordination between the Antimonopoly Committee of Ukraine and Verkhovna Rada (Parliament) of Ukraine;
- 5) ensure coordination between the Antimonopoly Committee of Ukraine and ministries and other central executive agencies, law enforcement agencies, courts, other state agencies, enterprises, institutions and organizations;
- 6) ensure Interaction between the Antimonopoly Committee of Ukraine and international organizations, state agencies and nongovernmental organizations of other states;
- 7) if requested by the Chairman of the Antimonopoly Committee of Ukraine participate in sessions held by Committees of the Verkhovna Rada (Parliament) of Ukraine to review issues related to the activities performed by the Antimonopoly Committee of Ukraine and represent the Antimonopoly Committee of Ukraine in its relations with other state agencies, bodies of local self-government, enterprises, institutions and organizations;
- 8) concur appointment and dismissal of employees, changes in the organizational structure and manning table of their subordinate structural subdivisions.

{Article 10 was supplemented by new part three pursuant to the Law of Ukraine № 1294-IV of 20.11.2003}

The First Deputy shall be entitled to delegate to the employees of the Antimonopoly Committee of Ukraine and its territorial offices

the power to represent interests of the Antimonopoly Committee of Ukraine in court.

Duties and responsibilities of the First Deputy Chairman and Deputy Chairman of the Antimonopoly Committee of Ukraine shall be distributed by the Chairman of the Antimonopoly Committee of Ukraine.

At the request of the Chairman the First Deputy and Deputy Chairmen of the Antimonopoly Committee of Ukraine shall perform some of his functions and substitute the Committee Chairman if he is absent or unable to perform his responsibilities.

If the First Deputy and Deputy Chairman are absent the duties and responsibilities of the Chairman of the Antimonopoly Committee of Ukraine shall be performed by the state commissioner of the Antimonopoly Committee of Ukraine.

Article 11. State Commissioners of the Antimonopoly Committee of Ukraine

The State Commissioners of the Antimonopoly Committee of Ukraine shall be appointed by the President of Ukraine at the recommendation of the Prime Minister of Ukraine which is submitted on the basis of proposals made by the Chairman of the Antimonopoly Committee of Ukraine and dismissed by the President of Ukraine.

The term of office of the State Commissioner of the Antimonopoly Committee of Ukraine shall be seven years. If the state commissioner is appointed to the position of the First Deputy or Deputy Chairman of the Antimonopoly Committee of Ukraine it shall not be the grounds of renewing the seven-year term of his office.

After the expiration of the term of office a State Commissioner of the Antimonopoly Committee of Ukraine shall continue to fulfil his duties till a new State Commissioner has been appointed.

{Part four of the article 11 is excluded pursuant to the Law of Ukraine № 985-V of 24.04.2007}

{Part five of the article 11 is excluded pursuant to the Law of Ukraine № 1294-IV of 20.11.2003}

A State Commissioner shall be a citizen of Ukraine who reached the age of thirty, who has higher – as a rule legal or economic – education, whose length of service according to his specialization is not less than five years within the last ten years.

The State Commissioners shall be members of the Antimonopoly Committee of Ukraine in the capacity of the highest collegiate body.

The State Commissioners shall be heads or members of administrative boards of the Antimonopoly Committee of Ukraine, shall fulfil other duties according to instructions of the Chairman of the Antimonopoly Committee of Ukraine.

Article 12. Territorial Offices of the Antimonopoly Committee of Ukraine

The territorial offices of the Antimonopoly Committee of Ukraine shall be established in the Autonomous Republic of the Crimea, in the regions, in the cities of Kyiv and Sevastopol in order to implement the tasks with which the Antimonopoly Committee of Ukraine is entrusted. The powers of the territorial offices shall be defined by the Committee within its competence. In case of need, territorial offices may be established in other administrative and territorial units. If necessary one territorial office can cover several oblasts

The authority of territorial offices of the Antimonopoly Committee of Ukraine shall be defined by this Law and other legislation. The authority of territorial offices of the Antimonopoly Committee of Ukraine cannot go beyond the limits of authority assigned to the Antimonopoly Committee of Ukraine pursuant to the.

Territorial office the Antimonopoly Committee of Ukraine shall be headed by the head of the territorial offices. Head of the territorial offices and its deputy shall be appointed and dismissed by the Chairman of the Antimonopoly Committee of Ukraine. Deputy Head of the territorial office shall be appointed and dismissed by the Chairman of Committee on the recommendation of the head of the territorial offices.

{Part four of article 12 was excluded pursuant to the Law № 985-V of 24.04.2007}

No limitation of procedures related to appointment of the heads of territorial offices of the Antimonopoly Committee of Ukraine and their deputies, including by imposing an obligation of concurring the candidates for these positions with other state agencies and bodies of local self-government shall be authorized.

Territorial office of the Antimonopoly Committee of Ukraine shall be responsible to and account before the Antimonopoly Committee of Ukraine.

Article 12¹ Establishment and Administration of Collegial Bodies of the Antimonopoly Committee of Ukraine

The standing administrative boards of the Antimonopoly Committee of Ukraine shall be established by the Antimonopoly Committee of Ukraine and composed of three state commissioners of the Antimonopoly Committee of Ukraine. Standing administrative

board shall be headed by the First Deputy or Deputy Chairman of the Antimonopoly Committee of Ukraine.

Temporary administrative boards of the Antimonopoly Committee of Ukraine shall be established by the Chairman of the Antimonopoly Committee of Ukraine from among state commissioners and the heads of territorial offices of the Antimonopoly Committee of Ukraine and include at least three persons. Temporary administrative board shall be headed by the state commissioner of the Antimonopoly Committee of Ukraine.

Administrative board of the territorial offices of the Antimonopoly Committee of Ukraine shall be established by the head of the territorial offices of the Antimonopoly Committee of Ukraine from among executive officers of the territorial offices and include at least three persons from this territorial office. With the consent of the Chairman of the Antimonopoly Committee of Ukraine the administrative boards of the territorial offices of the Antimonopoly Committee of Ukraine may include the officials of the Antimonopoly Committee of Ukraine. The administrative board of the territorial office of the Antimonopoly Committee of Ukraineshall be headed by the head of the territorial office or his deputy.

The activities performed by administrative board of the territorial office of the Antimonopoly Committee of Ukraine shall be coordinated by the chairman of respective territorial office of the Antimonopoly Committee of Ukraine.

Members of the Antimonopoly Committee of Ukraine, administrative board of the Antimonopoly Committee of Ukraine, administrative board of territorial office of the Antimonopoly Committee of Ukraine shall enjoy equal rights when considering issues pertaining to the jurisdiction of these agencies in conformity with legislation

on protection of economic competition and when adopting orders and decisions.

The administrative board of the Antimonopoly Committee of Ukraine shall adopt its decisions on behalf of the Antimonopoly Committee of Ukraine.

The administrative board of the territorial office of the of Ukraine shall adopt its decisions on behalf of the territorial office of the Antimonopoly Committee of Ukraine.

The Antimonopoly Committee of Ukraine, administrative boards of the Antimonopoly Committee of Ukraine, administrative boards of the territorial offices of the Antimonopoly Committee of Ukraine shall perform their functions at the sessions.

The session of the Antimonopoly Committee of Ukraine, administrative board of the Antimonopoly Committee of Ukraine, administrative board of the territorial office of the Antimonopoly Committee of Ukraine shall be deemed legally qualified if attended by the majority of their members.

The Antimonopoly Committee of Ukraine, administrative board of the Antimonopoly Committee of Ukraine, administrative board of the territorial office of the Antimonopoly Committee of Ukraine shall adopt orders and decisions by the votes cast by majority of members attending their sessions.

All orders and decisions adopted by the Antimonopoly Committee of Ukraine, administrative board of the Antimonopoly Committee of Ukraine, administrative board of the territorial office of the Antimonopoly Committee of Ukraine that are regulatory guidelines pursuant to the Law shall be drafted, considered, adopted and published in conformity with the requirements set forth by the Law of Ukraine “On Principles of State Regulatory Policy in Economic Activities”.

Should the Antimonopoly Committee of Ukraine decide to verify the decision adopted by the state commissioner of the Antimonopoly Committee of Ukraine or by administrative board of the Antimonopoly Committee of Ukraine or to verify the legitimacy and relevancy of the judgement about administrative offence passed by the administrative board of the Antimonopoly Committee of Ukraine or by the state commissioner of the Antimonopoly Committee of Ukraine the session shall be deemed legally qualified if it was attended by the majority of members of the Antimonopoly Committee of Ukraine, excluding the members of the Antimonopoly Committee of Ukraine who participated in adopting the decision or in passing the judgement that are verified. In this case the decision is adopted by the majority of the Antimonopoly Committee of Ukraine members. The members of the Antimonopoly Committee of Ukraine who adopted the decision or passed the decision that are verified do not participate in voting.

The procedures of activities performed by the Antimonopoly Committee of Ukraine, administrative boards of the Antimonopoly Committee of Ukraine, administrative boards of the territorial offices of the Antimonopoly Committee of Ukraine as collegial bodies are stipulated by this Law, other regulations pertaining to the legislation on protection of economic competition and by internal rules of these bodies approved by the Antimonopoly Committee of Ukraine.

Article 13. Exclusive Jurisdiction of the Antimonopoly Committee of Ukraine as Highest Collegial Body

The following shall fall under the exclusive jurisdiction of the Antimonopoly Committee of Ukraine:

- 1) issue authorizations for or interdict concerted practices in conformity with parts one and two of the article 10 Law of Ukraine “On Protection of Economic Competition”;
- 2) verify decisions adopted by the state commissioners and administrative boards of the Antimonopoly Committee of Ukraine, verify legitimacy and relevancy of judgements on administrative offence passed by the state commissioners and administrative boards of the Antimonopoly Committee of Ukraine. This limitation does not apply to cases of verifications, inquiries and proceedings performed by respective law enforcement agencies and courts;
- 3) revise decisions adopted by the Antimonopoly Committee of Ukraine in cases on violations of the legislation on protection of economic competition and under complaints and cases regarding concerted practices and concentration;
- 4) approve internal regulatory legal acts;
- 5) jointly with other involved executive agencies approve interdepartmental regulatory legal acts;
- 6) approve draft regulatory legal acts developed by the Antimonopoly Committee of Ukraine that concern issues related to its jurisdiction as set forth by the legislation on protection of economic competition;
- 7) provide official interpretation of internal regulatory legal acts and clarifications on issues related to application of the legislation on protection of economic competition;
- 8) approve provisions on territorial offices of the Antimonopoly Committee of Ukraine;
- 9) approve provisions on advisory bodies of the Antimonopoly Committee of Ukraine and their composition;

- 10) set up standing administrative boards of the Antimonopoly Committee of Ukraine;
- 11) hear the reports of state commissioners, heads of the territorial offices, heads of independent structural subdivisions of the Antimonopoly Committee of Ukraine;
- 12) approve reports delivered by the Antimonopoly Committee of Ukraine before their submittal to the Verkhovna Rada (Parliament) of Ukraine.

All regulatory legal acts of the Antimonopoly Committee of Ukraine and interdepartmental regulatory legal acts on issues of competition policy, promotion and protection of competition and demonopolization of national economy that are regulatory guidelines pursuant to the Law shall be drafted, considered, adopted and published in conformity with the requirements set forth by the Law of Ukraine “On Principles of State Regulatory Policy in Economic Activities”.

The Antimonopoly Committee of Ukraine as the highest collegial body can consider any issue falling under jurisdiction of its bodies.

Article 14. Jurisdiction of Administrative Boards of the Antimonopoly Committee of Ukraine and Administrative Boards of Territorial offices of the Antimonopoly Committee of Ukraine

The standing administrative board of the Antimonopoly Committee of Ukraine shall have the following powers:

- 1) consider applications and cases concerning violation of the legislation on protection of economic competition, issuance of authorizations, preliminary findings about concerted

- practices and concentration, perform investigations or inquiries into these complaints and cases;
- 2) in conformity with legislation on protection of economic competition adopt orders and decisions, provide findings about classification of actions in conformity with legislation on protection of economic competition, preliminary findings about concerted practices and concentration;
 - 3) verify decisions adopted by the administrative boards of the territorial offices of the Antimonopoly Committee of Ukraine;
 - 4) revise decisions adopted by the standing administrative board of the Antimonopoly Committee of Ukraine;
 - 5) require from the economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, their officials and employees, other natural persons and legal entities to provide information, including restricted information when considering applications and cases concerning violation of the legislation on protection of economic competition, conducting verifications and in other cases provided for by the law;
 - 6) decide to perform expert evaluation and appoint an expert from among persons possessing necessary conformity to work out the expert findings;
 - 7) perform market research, define limits of the product market and to determine share, including monopoly (predominant) share held by the economic entities in this market and adopt respective decisions (orders);

- 8) define availability or lack of control over economic entities or their parts and determine if a group of economic entities constitutes one economic entity;
- 9) present to the executive agencies binding recommendations on cancellation of licenses, termination of transactions related to the foreign trade activities of the economic entities if they violate the legislation on protection of economic competition;
- 10) issue binding recommendations to the bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, economic entities, associations regarding termination of their activities or inactions that lead or may lead to violation of the legislation on protection of economic competition and recommendations regarding elimination of their causes and contributing conditions;
- 11) consider administrative offence cases, pass decisions and verify legitimacy and relevancy of decisions passed by administrative boards of the territorial offices of the Antimonopoly Committee of Ukraine on these cases;
- 12) apply to the courts with requests regarding submittal of information about litigation cases considered by these courts in conformity with legislation on protection of economic competition.

The standing administrative board of the Antimonopoly Committee of Ukraine is entitled to issue binding recommendations and offer suggestions to the state agencies, bodies of local self-government, institutions, organizations, economic entities,

associations on measures to restrict monopolism, promote entrepreneurship and competition, prevent violation of the legislation on protection of economic competition and terminate actions and omissions that may negatively affect competition.

The standing administrative board of the Antimonopoly Committee of Ukraine exercises other powers in conformity with legislation on protection of economic competition.

The jurisdiction of the temporary administrative boards of the Antimonopoly Committee of Ukraine encompasses revision of the decisions passed by the Temporary administrative board of the Antimonopoly Committee of Ukraine, exercising powers specified in items 1, 2, 5-10 and 12 of part one and part two of this article, and other exercising other powers in conformity with legislation on protection of economic competition.

The administrative board of the territorial office of the Antimonopoly Committee of Ukraine shall have the following powers:

- 1) consider applications and cases concerning violation of the legislation on protection of economic competition, issuance of authorizations, provide preliminary findings about concerted practices, perform investigations or inquiries into these complaints and cases;
- 2) adopt orders and decisions as provided for by the legislation on protection of economic competition, provide preliminary findings about concerted practices;
- 3) consider administrative offence cases, pass decisions on these cases;
- 4) revise decisions adopted by the administrative board of the territorial office of the Antimonopoly Committee of Ukraine;

- 5) require from of the economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, their officials and employees, other natural persons and legal entities to provide information, including restricted information when considering applications and cases concerning violation of the legislation on protection of economic competition, conducting verifications and in other cases provided for by the law;
- 6) assign expert evaluation and an expert from among persons possessing necessary knowledge to deliver expert findings;
- 7) perform market research, define limits of the product market, determine share, including monopoly (predominant) share held by the economic entities in this market and adopt respective decisions (orders);
- 8) define availability or lack of control over economic entities or their parts and determine if a group of economic entities constitutes one economic entity;
- 9) issue to the executive agencies binding recommendations on cancellation of licenses, termination of transactions related to the foreign trade activities of the economic entities if they violate the legislation on protection of economic competition;
- 10) issue binding recommendations to the bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, economic entities, associations regarding termination of their activities or inactions that lead or may lead to violation of the legislation on protection of economic competition and

recommendations regarding elimination of their causes and contributing conditions;

- 11) apply to the courts with requests regarding submittal of information about litigation cases considered by these courts in conformity with legislation on protection of economic competition.

The administrative board of the territorial offices of the Antimonopoly Committee of Ukraine is entitled to issue binding recommendations and offer to the state agencies, bodies of local self-government, institutions, organizations, economic entities, associations suggestions regarding measures to restrict monopolism, promote entrepreneurship and competition, prevent violation of the legislation on protection of economic competition and terminate actions and omissions that may negatively affect competition.

The administrative board of the territorial office of the Antimonopoly Committee of Ukraine exercises other powers in conformity with legislation on protection of economic competition.

Article 15. Staff of the Antimonopoly Committee of Ukraine and its Territorial Offices

Organization, technical, analytical, information, reference and other types of work directed towards the maintenance of activities of the Antimonopoly Committee of Ukraine and its agencies, territorial offices shall be carried out by the staff of the Antimonopoly Committee of Ukraine or its territorial office respectively.

The staff of the Antimonopoly Committee of Ukraine and its territorial offices shall be entitled to perform the following to meet the objectives set forth in part one of this article, at the request

of the Chairman of the Antimonopoly Committee of Ukraine, state commissioner or other body of the Antimonopoly Committee of Ukraine:

- 1) investigate complaints and cases pertaining to violation of the legislation on protection of economic competition, hold inquiries into complaints and cases pertaining to issuance of authorizations and preliminary findings about concerted practices and concentration of the economic entities, conduct market research;
- 2) perform verification of the economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control for their compliance with requirements of the legislation on protection of economic competition and during inquiries into complaints and cases pertaining to violation of the legislation on protection of economic competition;
- 3) have an unrestricted access to the premises of enterprises, institutions and organizations during verifications and inquiries into complaints and cases pertaining to violation of the legislation on protection of economic competition, upon presentation of the service identification card and documents certifying the right to perform verification or investigation;
- 4) require from of the economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, their officials and employees, other natural persons and legal entities to provide information, including restricted

information when considering applications and cases concerning violation of the legislation on protection of economic competition, conducting verifications and in other cases provided for by the law;

- 5) inspect the offices and transportation vehicles of the economic entities that are legal entities and seize or arrest objects, documents or other data carriers that may be used as an evidence with regard to a case under consideration regardless of its whereabouts in cases and in accordance with procedures prescribed by the law;
- 6) in case of any interference with actions that the employees of the Antimonopoly Committee of Ukraine perform in conformity with items 2-5 of part 2 of this Article they shall be entitled to apply for intervention of the enforcement agencies to take necessary legal measures to overcome such interference;
- 7) enlist employees of the internal affair agencies, customs and other law enforcement agencies to facilitate inquiries into the cases on violation of the legislation on protection of economic competition, in particular, when performing investigations, including those associated with collection and seizure of evidence, arrest of property, items, documents, other data carriers;
- 8) enlist the specialists of the bodies of state power, bodies of local self-government, enterprises, institutions, organizations into verifications as agreed upon with their supervisory officials, or with the deputies of local Radas (local councils) with their consent;
- 9) draw statements of administrative offences.

If requested by the bodies of the Antimonopoly Committee of Ukraine, heads of the respective territorial offices of the Antimonopoly Committee of Ukraine the officials of the territorial offices of the Antimonopoly Committee of Ukraine shall be entitled to perform actions as provided for by part two of this article.

Provisions about structural subdivisions of the Antimonopoly Committee of Ukraine shall be approved by the Chairman of the Antimonopoly Committee of Ukraine, and provisions about structural subdivisions of the territorial offices shall be approved by the head of the territorial office of the Antimonopoly Committee of Ukraine.

Section III.

STATUS OF STATE COMMISSIONER AND HEAD OF TERRITORIAL OFFICE OF ANTIMONOPOLY COMMITTEE OF UKRAINE

Article 16. Jurisdiction of State Commissioner of the Antimonopoly Committee of Ukraine

The state commissioner of the Antimonopoly Committee of Ukraine shall have the following powers:

- 1) consider applications and cases concerning violation of the legislation on protection of economic competition, issuance of authorizations, provide preliminary findings about concerted practices and concentration, adopt orders to initiate examination of cases or provide substantiated refusal to examine cases, perform and organize investiga-

tions or inquiries into these complaints and cases, close proceedings on these cases even if they fall under jurisdiction of other bodies of the Antimonopoly Committee of Ukraine, submit and/or transfer them in accordance with procedures set forth by the Antimonopoly Committee of Ukraine for consideration of these bodies for decision;

- 2) adopt orders and decisions as provided for by the legislation on protection of economic competition, provide preliminary findings about concerted practices;
- 3) draw statements, consider administrative offence cases, pass decisions on these cases;
- 4) perform verification of the economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control for their compliance with requirements of the legislation on protection of economic competition and during inquiries into complaints and cases pertaining to violation of the legislation on protection of economic competition;
- 5) have an unrestricted access to the premises of enterprises, institutions and organizations during verifications and inquiries into complaints and cases pertaining to violation of the legislation on protection of economic competition, upon presentation of the service identification card and documents certifying the right to perform verification or investigation;
- 6) require from of the economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, their officials and employees, other natural persons and legal entities

- to provide information, including restricted information when considering applications and cases concerning violation of the legislation on protection of economic competition, conducting verifications and in other cases provided for by the law;
- 7) summon officials and employees of the economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, other legal entities, their structural subdivisions, offices, representative offices and persons to provide explanations pertaining to applications and cases concerning violation of the legislation on protection of economic competition;
 - 8) assign expert evaluation and an expert from among persons possessing necessary knowledge to deliver expert findings;
 - 9) inspect the offices and transportation vehicles of the economic entities that are legal entities and seize or arrest objects, documents or other data carriers that may be used as an evidence with regard to a case under consideration regardless of its whereabouts in cases and in accordance with procedures prescribed by the law;
 - 10) in case of any interference with actions that the employees of the Antimonopoly Committee of Ukraine perform in conformity with items 4-6 and 9 of part one of this article they shall be entitled to apply for intervention of the enforcement agencies to take necessary legal measures to overcome such interference;
 - 11) enlist employees of the internal affair agencies, customs and other law enforcement agencies to facilitate inquiries into the cases on violation of the legislation on protection

- of economic competition, in particular, when performing investigations, including those associated with collection and seizure of evidence, arrest of property, items, documents, other data carriers;
- 12) enlist the specialists of the bodies of state power, bodies of local self-government, enterprises, institutions, organizations into verifications as agreed upon with their supervisory officials, or with the deputies of local Radas (local councils) with their consent;
 - 13) perform market research, define limits of the product market, determine share, including monopoly (predominant) share held by the economic entities in this market and adopt respective decisions (orders);
 - 14) define availability or lack of control over or co-ordination of actions between economic entities or their parts and determine if a group of economic entities constitutes one economic entity;
 - 15) issue to the executive agencies binding recommendations on cancellation of licenses, termination of transactions related to the foreign trade activities of the economic entities if they violate the legislation on protection of economic competition;
 - 16) issue binding recommendations and offer to the state agencies, bodies of local self-government, institutions, organizations, economic entities, associations measures to restrict monopolism, promote entrepreneurship and competition, prevent violation of the legislation on protection of economic competition and terminate actions and omissions that may negatively affect competition;

- 17) issue binding recommendations to the bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, economic entities, associations regarding termination of their activities or inactions that lead or may lead to violation of the legislation on protection of economic competition and recommendations regarding elimination of their causes and contributing conditions;
- 18) apply to the court with pleas, complaints and appeals related to administration of the legislation on protection of economic competition and with requests regarding submittal of information about litigation cases considered by these courts in conformity with legislation on protection of economic competition;
- 19) represent the Antimonopoly Committee of Ukraine without a special warrant, before an economic court;
- 20) exercise other powers as provided for by legislation on protection of economic competition and by the Law of Ukraine “On Conducting Public Procurements” and the Law of Ukraine “On Public Procurements”.

Decisions and orders of the state commissioners of the Antimonopoly Committee of Ukraine shall be passed on behalf of the Antimonopoly Committee of Ukraine.

Without specific permission of the Antimonopoly Committee of Ukraine as the highest collegial body no state commissioner can be a member of commissions, committees and other bodies established by the state agencies or bodies of local self-government.

The state commissioner of the Antimonopoly Committee of Ukraine shall meet all requirements of Ukrainian legislation,

be objective and unprejudiced during the implementation of his powers.

Article 17. Jurisdiction of Head of Territorial office of the Antimonopoly Committee of Ukraine

The head of the territorial office of the Antimonopoly Committee of Ukraine shall have the following powers:

- 1) perform and organize investigations into complaints pertaining to violation of the legislation on protection of economic competition, inquiries into complaints regarding issuance of authorizations, preliminary findings about concerted practices, competent administrative boards of the territorial offices, and if requested so by the Chairman or bodies of the Antimonopoly Committee of Ukraine perform and organize investigations regarding complaints and cases pertaining to violation of the legislation on protection of economic competition, hold inquiries into complaints and cases pertaining to issuance of authorizations for concerted practices and concentration if such fall under jurisdiction of these bodies;
- 2) adopt orders as provided for by the legislation on protection of economic competition;
- 3) perform verification of the economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control for their compliance with requirements of the legislation on protection of economic competition and during inquiries into complaints and cases pertaining

to violation of the legislation on protection of economic competition;

- 4) have an unrestricted access to the premises of enterprises, institutions and organizations during verifications and inquiries into complaints and cases pertaining to violation of the legislation on protection of economic competition, upon presentation of the service identification card and documents certifying the right to perform verification or investigation;
- 5) require from of the economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, their officials and employees, other natural persons and legal entities to provide information, including restricted information when considering applications and cases concerning violation of the legislation on protection of economic competition, conducting verifications and in other cases provided for by the law;
- 6) summon officials and employees of the economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, other legal entities, their structural subdivisions, offices, representative offices and persons to provide explanations pertaining to applications and cases concerning violation of the legislation on protection of economic competition;
- 7) assign expert evaluation and an expert from among persons possessing necessary knowledge to deliver expert findings;

- 8) inspect the offices and transportation vehicles of the economic entities that are legal entities and seize or arrest objects, documents or other data carriers that may be used as an evidence with regard to a case under consideration regardless of its whereabouts in cases and in accordance with procedures prescribed by the law;
- 9) in case of any interference with actions that the employees of the Antimonopoly Committee of Ukraine perform in conformity with items 3, 4, 5 and 8 of part one of this article call for the enforcement agencies to take necessary legal measures to overcome such interference;
- 10) enlist police officers, customs and other law enforcement agencies to facilitate inquiries into the cases on violation of the legislation on protection of economic competition, in particular, when performing investigations, including those associated with collection and seizure of evidence, arrest of property, items, documents, other data carriers;
- 11) enlist the specialists of the bodies of state power, bodies of local self-government, enterprises, institutions, organizations into verifications as agreed upon with their supervisory officials, or with the deputies of local Radas (local councils) with their consent;
- 12) perform market research, define limits of the product market, determine share, including monopoly (predominant) share held by the economic entities in this market and adopt respective decisions (orders);
- 13) define availability or lack of control over economic entities or their parts and determine if a group of economic entities constitutes one economic entity;

- 14) issue to the executive agencies binding recommendations on cancellation of licenses, termination of transactions related to the foreign trade activities of the economic entities if they violate the legislation on protection of economic competition;
- 15) issue binding recommendations and offer to the state agencies, bodies of local self-government, institutions, organizations, economic entities, associations measures to restrict monopolism, promote entrepreneurship and competition, prevent violation of the legislation on protection of economic competition and terminate actions and omissions that may negatively affect competition;
- 16) apply to the court with pleas, complaints and appeals related to administration of the legislation on protection of economic competition and with requests regarding submittal of information about litigation cases considered by these courts in conformity with legislation on protection of economic competition;
- 17) represent territorial office the Antimonopoly Committee of Ukraine without a special warrant, before an economic court;
- 18) authorize his deputies to exercise powers as provided for by items 1–2 of part one of this article;
- 19) draw statements of administrative offences;
- 20) exercise other powers as provided for by legislation on protection of economic competition and the Law of Ukraine “On Conducting Public Procurements” and the Law of Ukraine “On Public Procurements”.

If the issues in question relate to their jurisdiction, the head of the territorial office of the Antimonopoly Committee of Ukraine in the Autonomous Republic of Crimea, the head of the territorial office of the Antimonopoly Committee of Ukraine shall be entitled to be accepted without delays by the Chairman of the Verkhovna Rada of the Autonomous Republic of Crimea, Chairman of the Council of Ministers of the Autonomous Republic of Crimea, supervisory officials and officials of the local executive agencies, bodies of local self-government, enterprises, institutions, organizations.

The head of the territorial office of the Antimonopoly Committee of Ukraine shall have the rights and shall perform his duties and responsibilities within the limits of jurisdiction as set forth by this Law, other legislation acts, provision about territorial office of the Antimonopoly Committee of Ukraine approved by the Antimonopoly Committee of Ukraine and shall administer the activities performed by territorial office, ensure proper performance of objectives and functions assigned to the territorial office and its administrative boards.

The head of the territorial office of the Antimonopoly Committee of Ukraine shall pass the orders on behalf of territorial office of the Antimonopoly Committee of Ukraine.

Without specific permission of the Antimonopoly Committee of Ukraine as the highest collegial body the head of the territorial offices of the Antimonopoly Committee of Ukraine cannot be a member of commissions, committees and other bodies established by the state agencies, bodies of local self-government.

The head of the territorial office of the Antimonopoly Committee of Ukraine shall meet all the requirements of the Laws,

be objective and unprejudiced during the implementation of his powers.

Article 18. Disciplinary Responsibility and the Dismissal of a State Commissioner of the Antimonopoly Committee of Ukraine

The First Deputy, Deputy Chairman of the Antimonopoly Committee of Ukraine, state commissioner of the Antimonopoly Committee of Ukraine can be subject to disciplinary action on general grounds in accordance with procedures prescribed by the law.

First Deputy, Deputy Chairman of the Antimonopoly Committee of Ukraine, state commissioner of the Antimonopoly Committee of Ukraine, except for the general grounds provided for by the labour legislation and state service laws can be relieved of their duties:

through such a state of health that prevents him from further work;

at his will;

in the case of a flagrant violation of his official duties or in the case of a crime committed by him.

{Part three of article 18 was excluded pursuant to the Law of Ukraine № 1907-III of 13.07.2000}

The First Deputy, Deputy Chairman of the Antimonopoly Committee of Ukraine, state commissioner of the Antimonopoly Committee of Ukraine shall have the right to resign in accordance with the procedure defined by law.

Section IV.

LEGAL BASIS FOR THE IMPLEMENTATION OF THE POWERS
OF THE ANTIMONOPOLY COMMITTEE OF UKRAINE

Article 19. Guarantee of Implementation of Powers of the
Antimonopoly Committee of Ukraine

When considering complaints and cases regarding concerted practices and concentration, violation of the legislation on protection of economic competition, as well as performing investigations, inquiries, adopting orders, decisions on complaints and cases, performance of other powers related to supervision over due compliance with the legislation on protection of economic competition, exercising control over concerted practices and concentration, the bodies and officials of the Antimonopoly Committee of Ukraine and its territorial offices shall be guided only by the legislation on protection of economic competition and shall be independent of state agencies, bodies of local self-government, their officials and economic entities, political parties and other associations of citizens or their bodies.

Any interference of state agencies, bodies of local self-government, their officials and the economic entities, as well as political parties and other associations of citizens or their bodies into activities performed by the Antimonopoly Committee of Ukraine and its territorial offices shall be prohibited with exception of cases defined by the Laws of Ukraine.

Exerting influence in any form on an official of the Antimonopoly Committee of Ukraine and its territorial office for the purpose of pre-venting him from performing official duties or for the purpose of making him to arrive at an unlawful decision shall entail responsibility provided for by legislation.

Article 20. Relations of the Antimonopoly Committee of Ukraine with Bodies of State Power, Bodies of Local Self-government, Bodies of Administrative and Economic Government and Control, with the Mass Media and Public Organizations

The bodies of state power and bodies of local self-government shall participate in development and implementation of competition policy, interact with the Antimonopoly Committee of Ukraine on issues related to promotion of competition, development of regional economic promotion programs and inform the Antimonopoly Committee of Ukraine about completion of measures related to implementation of competition policy.

The Antimonopoly Committee of Ukraine and its territorial offices shall interact with bodies of state power, bodies of local self-government, bodies of administrative and economic government and control in matters associated with the development of competition and the demonopolization of the economy.

The Antimonopoly Committee of Ukraine and its territorial offices shall interact with bodies of the mass media and public organizations in the sphere of forestalling violations of the antimonopoly legislation and publish in mass media information about its activities and adopted decisions.

The bodies of state power, bodies of local self-government, bodies of administrative and economic government and control shall be obliged to come to an agreement with the Antimonopoly Committee of Ukraine, its territorial offices about such draft regulatory legal acts and other decisions that that could lead to the limitation or distortion of competition, in particular, those related to establishment of economic entities, their new or revised market conduct rules or such that may result in prevention, elimination,

limitation or distortion of competition in respective markets and to seek authorizations from the Antimonopoly Committee of Ukraine for concentration if such is stipulated by law.

Article 20¹. Relations between the Antimonopoly Committee of Ukraine and the Verkhovna Rada (Parliament of Ukraine), Cabinet of Ministers of Ukraine

The Antimonopoly Committee of Ukraine shall report to the Verkhovna Rada (Parliament) of Ukraine about its past activities annually before 15 March following the previous reporting period.

The Verkhovna Rada (Parliament) of Ukraine shall annually review the report delivered by the Antimonopoly Committee of Ukraine before April 15th and hear the reports, information (statements) presented by the Antimonopoly Committee of Ukraine.

If necessary the Antimonopoly Committee of Ukraine shall present to Committees of the Verkhovna Rada (Parliament) of Ukraine its proposals concerning draft laws on issues under its jurisdiction.

The Antimonopoly Committee of Ukraine shall interact with the Cabinet of Ministers of Ukraine on issues related to development and implementation of economic promotion programs of Ukraine.

The Antimonopoly Committee of Ukraine shall develop and present to the Cabinet of Ministers of Ukraine draft by-laws regarding priorities of competition policy for a certain time period, summarize and analyze information about their implementation.

Article 21. Notifying of Violations of the Antimonopoly Legislation

Bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, their officials

shall be obliged to notify the Antimonopoly Committee of Ukraine and its territorial offices of such pieces of information that could be indicative of violations of legislation on protection of economic competition.

Article 22. Binding Nature of Orders, Decisions and Requirements Made by the State Commissioners and the Heads of Territorial Offices of the Antimonopoly Committee of Ukraine

Orders, decisions and requirements adopted by the body of the Antimonopoly Committee of Ukraine, head of the territorial offices of the Antimonopoly Committee of Ukraine and requirements set forth by duly authorized employees of the Antimonopoly Committee of Ukraine, its territorial office within the limits of their jurisdiction shall be binding and executed in duly established terms unless otherwise stipulated by the law.

Failure to obey the orders, decisions and requirements adopted and set forth by the body of the Antimonopoly Committee of Ukraine, head of the territorial office of the Antimonopoly Committee of Ukraine and requirements set forth by duly authorized employees of the Antimonopoly Committee of Ukraine and its territorial offices shall be punished in conformity with the law.

Article 22¹. Submitting Information

If requested so by the body of the Antimonopoly Committee of Ukraine, head of the territorial offices of the Antimonopoly Committee of Ukraine, duly authorized employees of the Antimonopoly Committee of Ukraine, its territorial offices, all economic entities, associations, bodies of state power, bodies of local self-government, bodies of administrative and economic government and control,

other legal entities, their structural subdivisions, offices, representative offices, their officials and employees, persons shall submit documents, items or other data carriers, explanations, other information, including restricted information, and bank secrets that the Antimonopoly Committee of Ukraine, its territorial offices require to meet the objectives set forth by the legislation on protection of economic competition.

Any documents, statistic and other information that are necessary to meet objectives set forth by the legislation on protection of economic competition shall be given free of charge at the request of the body of the Antimonopoly Committee of Ukraine, head of the territorial office of the Antimonopoly Committee of Ukraine, duly authorized employees of the Antimonopoly Committee of Ukraine, its territorial offices. The body of the Antimonopoly Committee of Ukraine, head of the territorial office of the Antimonopoly Committee of Ukraine can request for information once or periodically.

Restricted information that the Antimonopoly Committee of Ukraine, its territorial offices have received in the process of implementing their powers shall be used by them exclusively to meet objectives set forth by the legislation on protection of economic competition and shall not be subject to disclosure, and publicity, except in the following cases:

- 1) providing the information to the investigative agencies and court bodies in accordance with the law;
- 2) failure to comply with the requirements set out in Part 2 of Article 6 of the Law of Ukraine "On Access to Public Information";
- 3) other cases established by law.

The person providing the information as restricted information is required to indicate what kind of information is restricted, including what documents or parts of documents contain the restricted information.

In order to ensure the right of a person to confidentiality of information in the cases provided for in Paragraphs 2 and 3 of Part Three of this Article, the Antimonopoly Committee of Ukraine, its territorial offices, should consult with such persons in order to clarify the grounds for referring the information to the information with restricted access and possibilities withdrawal of such status by the person from the information provided by him and / or submission by the person to the terms of the non-confidential version established by the Antimonopoly Committee of Ukraine, its territorial office documents or other information, including excluded, obscure, or otherwise altered information that provides sufficient protection for it and the achievement of the goals set out in paragraphs 2 and 3 of Part Three of this Article, and / or ascertaining the harm that may be caused to a person to be disclosed such information.

The employees of the Antimonopoly Committee of Ukraine, its territorial offices shall be held responsible for disclosure of commercial secret pursuant to the Law.

Any oral requests made by the state commissioner of the Antimonopoly Committee of Ukraine, head of the territorial office of the Antimonopoly Committee of Ukraine and/or employees of the Antimonopoly Committee of Ukraine and its territorial offices duly authorized by them as well as statements and other actions that persons perform following such oral requests shall be recorded in the protocol along with the date and place it was drafted, full name of the state commissioner of the Antimonopoly Committee of Ukraine, head of the territorial office of the Antimonopoly Committee of Ukraine,

and/or employees of the Antimonopoly Committee of Ukraine and its territorial office duly authorized by them as well as their position and full name of persons who made the statement.

The protocol shall be signed by the chairman of the collegial body of the Antimonopoly Committee of Ukraine, state commissioner of the Antimonopoly Committee of Ukraine, chairman territorial offices, authorized by them employee of the Antimonopoly Committee of Ukraine, its territorial offices and persons who received an oral request. If the persons who received the oral requests refuses to sign the protocol it shall be properly mentioned in the protocol. Persons shall be entitled to provide their explanations and comments regarding the content of the protocol that shall be attached to the protocol and to describe the reasons of their refusal to sign it.

Article 22². Interaction between the Antimonopoly Committee of Ukraine and Competent Agencies of Other States

On the basis of international treaties of Ukraine that were recognized as binding by the Verkhovna Rada (Parliament) of Ukraine the Antimonopoly Committee of Ukraine shall interact with the competent agencies of other states, in particular, by exchange of information.

The Antimonopoly Committee of Ukraine may submit to the competent agencies of other states and receive from them information, including restricted information.

The Antimonopoly Committee of Ukraine shall submit information to the competent agencies of other states only if:

- this information is used by the competition control agency exclusively to meet its legal objectives;

- the respective competition agency can limit the access to this information to exclude its disclosure for other purposes or its disclosure by any possible way, including by way of an unauthorized access.

Article 23. Procedural Principles of Activities Performed by the Antimonopoly Committee of Ukraine

The Antimonopoly Committee of Ukraine, its agencies and officials shall perform activities associated with detection, prevention and termination of violations of the legislation on protection of economic competition, including legislation on protection against unfair competition in conformity with procedural principles stipulated by legislative acts pertaining to the Law of Ukraine “On Protection of Economic Competition”.

The procedures that the Antimonopoly Committee of Ukraine and its territorial offices apply to examine cases related to violation of the legislation on protection of economic competition shall ensure proper protection of rights and legitimate interests of persons, legal entities and the State.

Article 23¹. Hearings in Cases Related to Issuance of Authorizations for Concerted Practices and Concentration and to Violation of the Legislation on Protection of Economic Competition

Bodies of the Antimonopoly Committee of Ukraine that examine the case about issuance of authorizations for concerted practices and concentration, violation of the legislation on protection of economic competition, including those related to unfair competition can hold hearings in this case before adopting the respective decisions.

Hearing is held by the body of the Antimonopoly Committee of Ukraine that considers the case at the request of this body's chairman by one or several of its members.

The body of the Antimonopoly Committee of Ukraine shall invite to the hearings persons who participate in consideration of the case, to provide explanations, reasons and any other considerations that are necessary to establish the actual circumstances of the case.

The employees of the Antimonopoly Committee of Ukraine, its territorial offices, and if necessary, the external experts shall participate in the hearings.

Other persons can be invited to participate in the hearings in the case unless the applicant party or the applicant party and defendant if the case relates to violation of the legislation on protection of economic competition, have provided any substantiated objections.

On its own initiative or at the request of persons who participate in the case the body of the Antimonopoly Committee of Ukraine can hold the completely or partially closed hearings in the case unless such hearings can detriment the interests of the State, persons who participate in the case and other persons or unless such hearing can interfere with further consideration of the case.

The procedure of hearings in the case shall be established by the Antimonopoly Committee of Ukraine in conformity with this Law and other legislation acts on related to protection of economic competition.

Article 24. Submittal of Decisions and Orders Adopted by Bodies of the Antimonopoly Committee of Ukraine and Heads of its Territorial Offices

Decisions and orders adopted by the bodies of the Antimonopoly Committee of Ukraine, heads of its territorial offices in conformity with legislation on protection of economic competition shall be submitted to persons who participate in the case, in form of the duplicates that are certified in accordance with a procedure prescribed by law.

Specifics of procedures applicable to submittal and publication of decisions and prescriptions shall be established in accordance with legislation on protection of economic competition.

Article 25. Judicial recourse

To protect legitimate interests of the State, consumers and economic entities the Antimonopoly Committee of Ukraine, territorial offices of the Antimonopoly Committee of Ukraine shall file complaints, pleas and appeals to the court, including complaints, pleas, and appeals to achieve the following:

- recognize null and void any regulatory legal acts and other by-laws, in particular, decisions, executive orders, orders, decisions etc., adopted by the bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, or denounce an agreement should they fail to timely observe and follow the decisions taken by the bodies of the Antimonopoly Committee of Ukraine to cancel the legislative acts adopted by such bodies of state power, bodies of local self-government,

bodies of administrative and economic government and control, or to denounce an agreement;

- levy any penalties and fees that have not been paid voluntarily;
- prevent violations of the legislation on protection of economic competition;
- force in to observing the decisions taken by the bodies of the Antimonopoly Committee of Ukraine;
- seize the commodities with improper designation and/or copies of commodities produced by other economic entity without any compensation;
- seize or arrest property, documents, items, other data carriers, individual's residence or other estate;
- for any other reasons established by law.

Section V.

OTHER MATTERS OF ACTIVITIES OF THE ANTIMONOPOLY COMMITTEE OF UKRAINE

Article 26. Scientific and Methodical Support Given to Activities

In order to prepare recommendations with respect to the organization and activities of the Antimonopoly Committee of Ukraine, with respect to the methodology of and methods for exercising control over the observance of the antimonopoly legislation, with respect to working out proposals for its application and improvement and with respect to other matters, the Antimonopoly Committee of Ukraine shall establish advisory bodies, shall

conduct technical, economic and scientific researches, shall involve experts and consultants, shall train personnel in accordance with special programs.

The Antimonopoly Committee of Ukraine shall publish its own print-ed editions to cover the issues related to activities performed by the Antimonopoly Committee of Ukraine and to competition policy.

Article 27. Structure, Maximum Staff Number, Positions,

Terms of Paying Salaries and Terms of Providing Both Material and Other Types of Support

The structure and positions of the Antimonopoly Committee of Ukraine and its territorial offices shall be approved by the Chairman of the Antimonopoly Committee of Ukraine within the expenditures provided for by the estimate of incomes and expenditures. The limit number of employees of the Antimonopoly Committee of Ukraine and its territorial offices shall be approved by the Cabinet of Ministers of Ukraine.

{Part two of the article 27 was excluded pursuant to the Law of Ukraine № 107-VI of 28.12.2007 – the amendment was declared unconstitutional pursuant to the Constitutional Court Decision No. 10-pn/2008 of 22.05.2008}

Terms of paying salaries to officials of the Antimonopoly Committee of Ukraine and its territorial offices shall be established by the Cabinet of Ministers of Ukraine in accordance with The Law of Ukraine “On State Service”.

Article 28. Financing of and Material and Technical Support Given to the Antimonopoly Committee of Ukraine

The financing of the Antimonopoly Committee of Ukraine and its territorial offices shall be carried out at the expense of general and special funds of the state budget.

The volume of allocations from the state budget for the maintenance of the Antimonopoly Committee of Ukraine and its territorial offices, including expenditures for paying salaries for their officials shall, annually, during the approval of the state budget, be established as a separate line of the state budget by the Verkhovna Rada (Parliament) of Ukraine.

The expenditures allocated to support the activities of the Antimonopoly Committee of Ukraine and its territorial offices shall be transferred by the Chief Department of the State Treasury of Ukraine to their current budget accounts from the general fund of the state budget in conformity with current transfer rate. The extent of this transfer rate shall be established by the Verkhovna Rada (Parliament) of Ukraine in the process of approving the state budget for subsequent year.

Finances received as a result of the payment of duties on the submission of applications for giving consent to concerted practices and con-centration of the economic entities and provision of findings shall be included in incomes of the special fund of the state budget, shall be transferred to a special account, shall not be confiscated and shall be used, in accordance with their special purpose, to finance the activities of the Antimonopoly Committee of Ukraine and its territorial offices in particular, their logistical, including transportation support, to create and promote their information and analytic facilities, publish printed editions issued by the bodies of

the Antimonopoly Committee of Ukraine, prepare, retrain, upgrade professional qualification and social conditions of the Antimonopoly Committee of Ukraine and its territorial offices' employees.

The estimate of incomes and expenditures of the Antimonopoly Committee of Ukraine and its territorial offices, including the amount of allocations for the maintenance of the Antimonopoly Committee of Ukraine and its territorial offices, the estimate of material support and other types of support in the sphere of everyday services, the estimate of transport and medical services, the estimate of allocations for social guarantees and the fund for paying salaries for officials of the Committee and its territorial offices shall be approved by the Antimonopoly Committee of Ukraine on the basis of recommendations made by the Chairman of the Antimonopoly Committee of Ukraine.

All transportation and logistical services shall be paid to Antimonopoly Committee of Ukraine from the state budget of Ukraine in accordance with procedures established by the Cabinet of Ministers of Ukraine.

Article 29. Protection of Individual and Property Rights of Officials of the Antimonopoly Committee of Ukraine

Officials of the Antimonopoly Committee of Ukraine, while on official duty, shall be representatives of state power. Their individual and property rights shall be protected by law equally with those of officials of law enforcement agencies.

Employees of the Antimonopoly Committee of Ukraine and its territorial office whose duties are to perform directly the functions specified in Article 2 of the Law of Ukraine "On State Protection of Court and Law Enforcement Agents" are subject to compulsory state

social insurance in accordance with the law on compulsory state social insurance.

{Part three of the article 29 was excluded pursuant to the Law of Ukraine № 77-VIII of 28.12.2014}

Losses incurred to an official of the Antimonopoly Committee of Ukraine or to an official of a territorial office or to members of his family by means of the destruction or damage of property in connection with his fulfilment of official duties shall be offset at the expense of finances of the state budget to the full extent in accordance with the procedure established by law, and later the corresponding sum shall be exacted from the crime committers.

{Part five of the article 29 was excluded pursuant to the Law of Ukraine № 77-VIII of 28.12.2014}

Article 29¹. Social Guarantees Given to the Chairman, Deputy Chairmen and State Commissioners of the Antimonopoly Committee of Ukraine

The Chairman of the Antimonopoly Committee of Ukraine, the Deputy Chairmen and the State Commissioners, after the expiration of the corresponding term of powers, shall be allowed to occupy the previous position, shall be allowed to resume studies; if it is impossible to occupy the previous position or to resume studies as a result of the liquidation of the enterprise, office or organization, they shall be allowed to occupy an equivalent position at another enterprise, office or organization or they shall be placed in the personnel reserve of the Antimonopoly Committee of Ukraine with respect to the positions which correspond to their professional level, with the rank of a public servant being taken into account. The average monthly sala-

ries shall be paid to the former Chairman, the Deputy Chairmen and the State Commissioners of the Antimonopoly Committee of Ukraine for the period of their unemployment, but not longer than a year.

The procedure of paying the above finances shall be defined by the Cabinet of Ministers of Ukraine.

The provisions of the present Article shall be applied unless they worsen the level of the social guarantees resulting from Article 27 of the present Law.

Article 30. Identification Card of an Official of the Antimonopoly Committee of Ukraine

The State Commissioners, the heads of territorial offices, executives of the Antimonopoly Committee of Ukraine and its territorial offices shall have an identification card. The statute of the identification card of an official of the Antimonopoly Committee shall be approved by the President of Ukraine.

President of Ukraine L. Kravchuk
The City of Kyiv
November 26, 1993
№ 3659-XII

LAW OF UKRAINE
ON PROTECTION OF ECONOMIC COMPETITION

The present Law shall define legal grounds for the maintenance and protection of economic competition, for the limitation of monopolism in economic activities and shall be directed towards ensuring the efficient functioning of the economy of Ukraine on the basis of the development of competitive relations.

Section I
GENERAL PROVISIONS

Article 1. Terms Defined

For the purposes of the present Law the following terms and their definitions shall be used:

economic competition (competition) denoting such a contest among economic entities with a view to gaining advantages over other economic entities thanks to their own achievements that results in the situation where consumers and economic entities

* convenience translation of the Law is made as of December 01, 2020.

have an opportunity to choose from among several sellers, buyers, whereas an individual economic entity is not able to set conditions for the turnover of products on the market;

unified property complex denoting all types of property that collectively provide the economic activity of an entity, including buildings, structures, equipment, inventory, raw materials, products, right to claim, debts, as well as trademark or other designation and other rights , including rights to land plots, including a integral property complex;

information denoting knowledge in any form, of any type, fixed in any media (including correspondence, books, notes, illustrations (maps, diagrams, organigrams, pictures, schemes, etc.), photographs, holographs, cine-films, videofilms, microfilms, sound records, computer system databases or the complete or partial reproduction of their elements), explanations given by persons, and any knowledge that is publicly announced or documented;

control denoting such a decisive impact on economic activities of an economic entity or its part that is exerted by one or more than one related legal and (or) natural persons directly or through other persons, in particular by: the right to own or use all the assets or their considerable part; the right ensuring a decisive impact on the formation, voting results, and decisions of managing bodies of the economic entity; the conclusion of such agreements and contracts that make it possible to set conditions for economic activities, to give binding instructions or to perform functions of the managing body of the economic entity; the occupation of the position of the head, a deputy head of the supervisory board, the board of directors or of other supervisory or executive board of the economic entity by such a person that occupies one or several of the mentioned

positions at other economic entities; the occupation of more than half of the positions of members of the supervisory board, the board of directors, other supervisory or executive boards of the economic entity by such persons that occupy one or several of the mentioned positions at another economic entity. Legal and (or) natural persons who jointly or concertedly perform economic activities, including those which jointly or concertedly impact on economic activities of the economic entity, shall be considered as related. More specifically, related natural persons are those who are spouses, parents and children, siblings;

small or medium-sized entrepreneur denoting an economic entity whose total income (proceeds) from the sale of products (goods, work, services) in the last financial year or whose total assets do not exceed such a sum equivalent to 500,000 euros that is defined in accordance with an exchange rate to be set by the National Bank of Ukraine and to be effective on the last day of the financial year if there are competitors having significantly larger shares in the given market;

monopolization denoting the acquisition of a monopoly (dominant) position on the product market, the maintenance or strengthening of that sort of position;

bodies of power denoting ministries and other central bodies of executive power; the Verkhovna Rada (Parliament) of the Autonomous Republic of the Crimea; bodies of executive power of the Autonomous Republic of the Crimea; state bodies regulating activities of both economic entities being subjects of natural monopolies and securities markets; state bodies of privatisation; the National Council on Television and Broadcasting; local bodies of executive power;

associations denoting associations of legal and (or) natural persons, including associations of enterprises and public organizations;

bodies of administrative and economic management and control denoting economic entities, associations, other persons in terms of their performing functions of management or control within such authorities of bodies of power or bodies of local self-government that are delegated to them;

bodies of the Antimonopoly Committee of Ukraine denoting the Antimonopoly Committee of Ukraine, standing and temporary administrative boards of the Antimonopoly Committee of Ukraine, a state commissioner of the Antimonopoly Committee of Ukraine, administrative boards of territorial offices of the Antimonopoly Committee of Ukraine;

market of a product (product market) denoting the sphere of turnover of a product (intersubstitutable products) for which there is demand and supply for a certain time and within a certain territory;

economic entity denoting such a legal person irrespective of its organization and legal form, its form of ownership or such a natural person that is engaged in the production, sale or purchase of products and in other economic activities, including a person who exercises control over another legal or natural person; a group of economic entities if one or several of them exercise control over the others. Bodies of state power, bodies of local self-government, bodies of administrative and economic management and control shall also be considered as economic entities in terms of their activities in the production, sale, and purchase of products or in terms of their other economic activi-

ties. Activities of a natural person in the purchase of consumer goods for their final consumption shall not be considered as economic activities;

product denoting any article of economic turnover, including goods, work, services, documents confirming obligations and rights (in particular securities).

Article 2. Scope of the Present Law

1. The present Law shall regulate relations of bodies of state power, bodies of local self-government, bodies of administrative and economic management and control with economic entities; relations of economic entities with other economic entities, consumers, other legal and natural persons in connection with economic competition.

2. The present Law shall be applied to such relations that ensue from or can have an impact on economic competition in the territory of Ukraine.

Article 3. Laws on the Protection of Economic Competition

1. Laws on the protection of economic competition shall be based on the norms established by the Constitution of Ukraine and shall consist of the present Law, the Laws of Ukraine “On the Antimonopoly Committee of Ukraine”, “On the Protection Against Unfair Competition”, other normative and legislative acts of Ukraine adopted in accordance with these Laws.

2. If an international treaty ratified by the Verkhovna Rada (Parliament) of Ukraine establishes rules different from the rules contained by the present Law, the rules of the international treaty shall be applied.

3. Peculiarities of the application of the laws on the protection of economic competition, in particular peculiarities of their application to certain branches of industry, may be established exclusively by amending the present Law.

Article 4. State Policy in the Sphere of the Development of Economic Competition and the Limitation of Monopolism

1. State policy in the sphere of the development of economic competition and the limitation of monopolism in economic activities, such measures relating to the demonopolization of the economy, financial, material, technical, information, consultative support and other types of support rendered to economic entities that facilitate the development of competition shall be performed by bodies of state power, bodies of local self-government, and bodies of administrative and economic management and control.

2. Economic entities, bodies of power, bodies of local self-government, and bodies of administrative and economic management and control shall facilitate the development of economic competition and shall not commit such unlawful actions that can have a negative impact on competition.

3. The bodies of state power responsible for ensuring state regulation and management in the respective sectors of the economy shall monitor the markets of these sectors for the purpose of analyzing and forecasting their development.

4. State control over the observance of the laws on the protection of economic competition, the protection of the interests of economic entities and consumers against violations of the laws shall be exercised by bodies of the Antimonopoly Committee of Ukraine.

5. Bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall facilitate the Antimonopoly Committee of Ukraine in its exercising authorities in the sphere of the maintenance and protection of economic competition, the limitation of monopolism and in its exercising control over the observance of the laws on the protection of economic competition.

6. In order to equally apply norms of the laws on the protection of economic competition uniformly, including laws on the protection against unfair competition, the Antimonopoly Committee of Ukraine shall give recommended interpretations with respect to the application of the laws.

Section II.

ANTICOMPETITIVE CONCERTED ACTIONS OF ECONOMIC ENTITIES, ABUSES OF A MONOPOLY (DOMINANT) POSITION ON THE MARKET

Article 5. Concerted Actions

1. Concluding agreements in any form by economic entities, taking decisions in any form by associations and other concerted competitive behaviour (actions, inactivity) of economic entities shall be considered as concerted actions.

Such establishment of an economic entity, association, that is directed towards or results in the co-ordination of competitive behaviour between economic entities which established the economic entity, association, or between them and the newly-

established economic entity shall also be considered as concerted actions.

2. Persons who perform or intend to perform concerted actions shall be considered as participants in concerted actions.

Article 6. Anticompetitive Concerted Actions of Economic Entities

1. Concerted actions which resulted or can result in the prevention, elimination or restriction of competition shall be anticompetitive concerted actions.

2. Concerted actions shall be considered as anticompetitive ones if they, in particular, concern:

- 1) the setting of prices or other conditions with respect to the purchase or sale of products;
- 2) the restriction of production, product markets, technical and technological development, investments or the establishment of control over them;
- 3) the distribution of markets or sources of supply in accordance with the territorial principle, the assortment of products, the volume of their sale or purchase, in accordance with the circle of sellers, buyers or consumers or in accordance with other signs;
- 4) the distortion of the results of auctions, contests, tenders;
- 5) the removal of other economic entities, buyers, sellers from the market or the limitation of their entry into (exit from) the market;
- 6) the application of different conditions to equivalent agreements concluded with other economic entities,

- which results in the creation of a disadvantage for these economic entities in terms of competition;
- 7) the conclusion of agreements provided that other economic entities assume additional obligations whose content or which in terms of customs in trade and other fair customs in entrepreneurial activities have nothing in common with the subject of these agreements;
 - 8) the substantial limitation of the competitiveness of economic entities on the market without objectively justified causes.
3. The economic entities of similar actions (inactions) in the goods market, which have led or may lead to the non-admission, elimination or restriction of competition if the analysis of the situation on the goods market disproves the existence of objective reasons for such actions (inactions) shall be also considered anticompetitive concerted actions.
 4. Anticompetitive concerted actions shall be prohibited and shall entail responsibility according to laws.
 5. A person who had committed anticompetitive concerted actions, but earlier than the remaining participants in the actions voluntarily informed the Antimonopoly Committee of Ukraine or its territorial office on the fact and submitted information of essential importance to taking a decision on the case must be relieved from the responsibility for committing anticompetitive concerted actions which are provided for by Article 52 of the present Law.

Bodies of the Antimonopoly Committee of Ukraine under authority of reasoned procedural request in favour of investiga-

tion on the case for a violation of the Laws on the protection of economic competition shall ensure the confidentiality of information of a person.

The person defined in the present part may not be relieved from the responsibility if the person:

having informed the Antimonopoly Committee of Ukraine on anticompetitive concerted actions, did not take efficient measures to terminate the actions;

was the initiator of the anticompetitive concerted actions or managed them;

did not submit all such evidence or information on the relevant violation committed by the person that was known to and that could be freely got by the person.

Article 7. Concerted Actions of Small or Medium-sized Entrepreneurs

The provisions of Article 6 of the present Law shall not be applied to such voluntary concerted actions of small and medium-sized entrepreneurs in terms of the joint purchase of products that do not result in the substantial restriction of competition and that facilitate raising the competitiveness of the small and medium-sized entrepreneurs.

Article 8. Concerted Actions Relating to the Supply and Use of Products

1. The provisions of Article 6 of the present Law shall not be applied to concerted actions relating to the supply and use of products if a participant in the concerted actions imposes, with respect to another participant in the concerted actions, restrictions on:

the use of products supplied by the participant or on the use of products of other suppliers;

the purchase of other products from other economic entities or on the sale of other products to other economic entities or consumers;

the purchase of such products that due to their nature or in terms of customs in trade and other fair customs in entrepreneurial activities have nothing in common with the subject of the relevant agreement;

the setting of prices or other contractual conditions for selling a supplied product to other economic entities or consumers.

2. The provisions of Article 6 of the present Law shall be applied to the concerted actions provided for by Part 1 of the present Article if actions of that sort:

result in the substantial restriction of competition on the whole market or in its significant part, including the monopolization of the relevant markets;

limit the entry of other economic entities into the market;

result in the economically unjustified raise in prices or the growth in product deficit.

Article 9. Concerted Actions Relating to Intellectual Property Rights

1. The provisions of Article 6 of the present Law shall not be applied to agreements on the transfer of intellectual property rights or on granting the right to use the intellectual property to the extent of the limitation, by the agreements, of economic activities of the agreement party to whom the right is transferred unless these limi-

tations exceed the limits of the legitimate rights of the intellectual property entity.

2. It shall be considered that limitations relating to the volume of transferred rights, the period and territory of validity of the permission to use the intellectual property object, those relating to the type of activities, the sphere of use, the minimal volume of production do not exceed the limits of the rights mentioned in Part 1 of the present Article.

Article 10. Authorizable Concerted Actions

1. The concerted actions provided for by Article 6 of the present Law may be authorized by the relevant bodies of the Antimonopoly Committee of Ukraine if their participants prove that the concerted actions facilitate:

the improvement of the production, purchase or sale of a product;
technical, technological, and economic development;
the development of small or medium-sized entrepreneurs;
the optimization of the export or import of products;
the elaboration and application of unified technical conditions or standards for products;
the rationalization of production.

2. The concerted actions provided for by Part 1 of the present Article may not be authorized by bodies of the Antimonopoly Committee of Ukraine if competition is substantially restricted on the whole market or in its significant part.

3. The Cabinet of Ministers of Ukraine may authorize concerted actions which were not authorized by the Antimonopoly Committee

of Ukraine according to Part 2 of the present Article if participants in the concerted actions prove that a positive effect produced by the restriction of competition on the public interests outweighs negative consequences.

4. The authorization provided for by Part 3 of the present Article may not be given if:

participants in concerted actions apply such restrictions that are not necessary for the implementation of the concerted actions;

the restriction of competition constitutes a threat to the system of market economy.

5. It shall be prohibited to perform the concerted actions provided for by Part 1 of the present Article until authorization has been granted by bodies of the Antimonopoly Committee of Ukraine in accordance with an established procedure.

Article 11. Typical Requirements for Concerted Actions

1. The Antimonopoly Committee of Ukraine may establish typical requirements for the concerted actions provided for by Articles 7, 8, 9, and 10 of the present Law.

2. Concerted actions which satisfy such typical requirements for certain types of concerted actions that are established by the Antimonopoly Committee of Ukraine shall be authorized and shall require no consent to be given by bodies of the Antimonopoly Committee of Ukraine in accordance with Part 1 of Article 10 of the present Law if this is directly stated by a decision of the Antimonopoly Committee of Ukraine on the establishment of the typical requirements.

Article 12. Monopoly (Dominant) Position of an Economic Entity

1. An economic entity shall occupy a monopoly (dominant) position on the product market if:

not a competitor is on the given market;

the economic entity is not exposed to substantial competition as a result of the limited access of other economic entities to the markets of raw materials, to the markets of materials, and to the markets of distribution because of the existence of barriers to the entry of other economic entities into the market, because of the existence of privileges or other circumstances.

2. The position of an economic entity shall be considered as a monopoly (dominant) position if its share in the product market exceeds 35 % unless the economic entity proves that it is exposed to substantial competition.

3. The position of an economic entity may also be considered as a monopoly (dominant) position if its share in the product market is equal to or is less than 35 % and if the economic entity is not exposed to substantial competition, in particular as a result of comparatively small market shares of competitors.

4. It shall be considered that either of the two or each of more than two economic entities occupies a monopoly (dominant) position on the product market if there is no competition or if there is no substantial competition between them with respect to a certain product and if a condition provided for by Part 1 of the present Article is satisfied as regards the competitors taken together.

5. The position of each of several economic entities shall be considered as a monopoly (dominant) position if, with respect to them, the following conditions are met:

the combined share of not more than three economic entities having the largest shares in the same market exceeds 50 %;

the combined share of not more than five economic entities having the largest shares in the same market exceeds 70 %;

unless they prove that the conditions provided for by Part 4 of the present Article are not satisfied.

Article 13. Abuse of a Monopoly (Dominant) Position on the Market

1. Such actions or inactivity of an economic entity occupying a monopoly (dominant) position on the market that resulted or can result in the prevention, elimination or restriction of competition, in particular the restriction of the competitiveness of other economic entities, or in the infringement of the interests of other economic entities or consumers, which would be impossible in case of the existence of substantial competition on the market, shall be considered as abuses of a monopoly (dominant) position on the market.

2. The following actions, in particular, shall be considered as abuses of a monopoly (dominant) position on the market:

- 1) the setting of such prices or other conditions for the purchase or sale of a product that would be impossible in case of the existence of substantial competition on the market;
- 2) the application of different prices or other different conditions to equivalent agreements with economic entities, sellers or buyers without objectively justified causes;
- 3) the conclusion of agreements on condition that the relevant economic entity assumes additional obligations

- which due to their nature or in terms of customs in trade and other fair customs in entrepreneurial activities have nothing in common with the subject of the contract;
- 4) the limitation of production, markets or technical development, which caused or can cause damage to other economic entities, buyers, sellers;
 - 5) the partial or complete refusal to purchase or sell a product if there are no alternative sources of sale or purchase;
 - 6) the substantial restriction of the competitiveness of other economic entities on the market without objectively justified causes;
 - 7) the creation of entry (exit) market barriers or the removal of sellers, buyers, other economic entities from the market.

3. An abuse of a monopoly (dominant) position on the market shall be prohibited and shall entail responsibility according to laws.

Article 14. Conclusions on the Qualification of Actions

In order to prevent violations of the laws on the protection of economic competition, to increase the predictability of its application, bodies of the Antimonopoly Committee of Ukraine or Administrative panel of the Antimonopoly Committee of Ukraine, proceeding from information submitted by economic entities, may give opinions in the form of recommended interpretations on the conformity of actions of the economic entities with the provisions of Articles 6, 10, and 13 of the present Law and Article 15¹ of Law of Ukraine “On Protection Against Unfair Competition”.

Section III.

ANTICOMPETITIVE ACTIONS OF BODIES OF POWER,
BODIES OF LOCAL SELF-GOVERNMENT,
BODIES OF ADMINISTRATIVE AND ECONOMIC MANAGEMENT
AND CONTROL

Article 15. Anticompetitive Actions of Bodies of Power, Bodies of Local Self-government, Bodies of Administrative and Economic Management and Control

1. The issue of any acts (decisions, orders, directions, enactments, etc.), the making of written or verbal instructions, the conclusion of agreements or any actions or inactivity of bodies of power, bodies of local self-government, bodies of administrative and economic management and control (a collegiate body or an official) which resulted or can result in the prevention, elimination, restriction or distortion of competition shall be considered as anticompetitive actions of bodies of power, bodies of local self-government, bodies of administrative and economic management and control.

2. In particular, the following actions of bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall be considered as anticompetitive ones:

the prohibition against or the prevention from establishing new enterprises or performing entrepreneurship in other organization forms in any sphere of activities and the placing of restrictions on performing certain activities, on the production, purchase or sale of certain types of products;

the direct or indirect compulsion of economic entities to join associations, concerns, interbranch, regional or other forms of unions of enterprises or the concentration of economic entities in other forms;

the direct or indirect compulsion of economic entities to conclude contracts with priority, to supply primarily a certain circle of consumers with products or to purchase products primarily from a certain circle of sellers;

any action directed towards the centralized distribution of products and the distribution of markets between economic entities according to the territorial principle, according to the assortment of products, according to the volume of their sale or purchase or according to the circle of consumers or sellers;

the establishment of a prohibition to sell certain products from one region of the country to another or the granting of permission to sell products from one region to another only in a certain volume or provided that certain conditions are met;

the granting of such privileges or other advantages to some economic entities or groups of economic entities that place them in a privileged position in comparison with that of competitors, which results or can result in the prevention, elimination, restriction or distortion of competition;

such an action that results in the creation of unfavourable or discriminatory conditions of activities for certain economic entities or groups of economic entities in comparison with the relevant conditions created for competitors;

an action establishing such prohibitions and restrictions of the independence of enterprises that are not provided for by laws of Ukraine, including prohibitions and restrictions in terms of the

purchase or sale of products, the setting of prices, the charting of programmes relating to activities and development, the use of profits.

3. Anticompetitive actions of bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall be prohibited and shall entail responsibility according to laws.

Article 16. Prohibition Against Delegating Authorities of Bodies of Power and Bodies of Local Self-government

It shall be prohibited for bodies of power and for bodies of local self-government to delegate some authorities to associations, enterprises, and other economic entities if this results or can result in the prevention, elimination, restriction or distortion of competition.

Article 17. Prohibition Against the Inducement to Commit Violations of the Laws on the Protection of Economic Competition and Against the Legalization of Them

Such actions or inactivity of bodies of power, bodies of local self-government, bodies of administrative and economic management and control (a collegiate body or an official) that induce economic entities, bodies of power, bodies of local self-government, bodies of administrative and economic management and control to violate the laws on the protection of economic competition or that create conditions for committing violations of that sort or for legalizing them shall be prohibited.

Section IV.
RESTRICTIVE AND DISCRIMINATORY ACTIVITIES
OF ECONOMIC ENTITIES AND ASSOCIATIONS

Article 18. Restrictive Activities of Economic Entities and Associations

1. It shall be prohibited for economic entities and associations to induce other economic entities to commit violations of the laws on the protection of economic competition or to facilitate committing that sort of violations.

2. It shall be prohibited for economic entities and associations to compel other economic entities:

to be engaged in the anticompetitive concerted actions defined by Article 6 of the present Law;

to be engaged in the concerted actions defined by Articles 7, 8, 9, and 10 of the present Law;

to participate in the concentration of economic entities defined by Article 22 of the present Law.

Article 19. Unlawful Use of a Market Position by an Economic Entity

1. It shall be prohibited for economic entities which were granted authorization for concerted actions in accordance with Article 10 of the present Law by the relevant bodies of the Antimonopoly Committee of Ukraine, for economic entities whose concerted actions are authorized according to Articles 7, 8, and 9 of the present Law to establish such restrictions with respect to economic activities of economic entities that, as a rule, are not applied to the relevant

activities of other economic entities or to apply, without objectively justified causes, different approaches to different economic entities.

2. It shall be prohibited for economic entities which in accordance with Part 3 of Article 10 of the present Law were granted permission for concerted actions by the Cabinet of Ministers of Ukraine, irrespective of their monopoly position, to commit such actions that in accordance with Article 13 of the present Law are considered as abuses of a monopoly (dominant) position on the market.

3. It shall be prohibited for the economic entities mentioned in Part 1 of the present Article to induce other economic entities to provide, without objectively justified causes, advantageous conditions for economic activities.

4. The provisions of Parts 1 and 3 of the present Article shall also be applied to economic entities upon which small or medium-sized enterprises depend for lack of alternative sources of the receipt or supply of a certain type of products. It shall be considered that a seller of a certain type of products depends upon a buyer if the buyer gets, in addition to traditional price rebates or benefits in other forms, special benefit which is not got by other similar buyers.

Article 20. Discrimination Practiced by Economic Entities Against Competitors

It shall be prohibited for economic entities having substantially greater market power in comparison with that of small or medium-sized entrepreneurs being their competitors to create barriers to economic activities of the small or medium-sized entrepreneurs, in particular to perform the actions prohibited according to Parts 1 and 3 of Article 19 of the present Law.

Article 21. Restrictive Activities of Associations

1. It shall be prohibited for an association to perform such activities by refusing to admit an economic entity to the association that place the economic entity at disadvantage with respect to competition if the refusal is groundless and unjustified.

2. Part 1 of the present Article shall be applied to associations if the following conditions with respect to the associations are satisfied:

the association can unite all the participants in the relevant market or territory;

the association is being established or is operating for achieving such aims that do not provide for earning a profit;

the establishment and activities of the association result neither in economic concentration nor in anticompetitive concerted actions as defined in the present Law.

Section V

CONTROL OVER THE CONCENTRATION
OF ECONOMIC ENTITIES

Article 22. Concentration of Economic Entities

1. In order to prevent the monopolization of product markets, abuses of a monopoly (dominant) position, the restriction of competition, bodies of the Antimonopoly Committee of Ukraine shall exercise state control over the concentration of economic entities (hereinafter referred to as “concentration”).

2. The following shall be considered as concentration:
 - 1) the merger of economic entities or the affiliation of an economic entity to another entity;
 - 2) the acquisition of control directly or through other persons over one or several economic entities or over parts of economic entities by one or several economic entities, in particular by means of:
 - a) the direct or indirect purchase or acquisition (by other means) of assets in the form of an integrated property complex of or a structural subdivision of an economic entity; the receipt (for further management), lease (leasing), concession or acquisition (by other means) of the right to use assets in the form of an integrated property complex of or a structural subdivision of an economic entity, in particular the purchase of assets of a liquidated economic entity;
 - b) the appointment or election of a person – occupying one or several positions of the head, a deputy head of the supervisory board, the board of directors or the mentioned positions at other supervisory or executive boards of other economic entities – as the head, a deputy head of the supervisory board, the board of directors or of other supervisory or executive boards of the economic entity or the creation of a situation where there is the coincidence of more than half of the members of the supervisory board, the board of directors, of members of other supervisory or executive boards of two or more than two economic entities;

{Subparagraph “c” of Paragraph 2 Part 2 of Article 22 excluded based on the Law № 2596-IV as of 31.05.2005}

- 3) the establishment of such an economic entity by two or more than two economic entities that will independently perform economic activities for a long period, whereas the mentioned formation does not result in the co-ordination of competition behaviour between economic entities which established the economic entity or between them and the newly-established economic entity;
 - 4) such direct or indirect purchase, acquisition (by other means) or receipt (for management) of shares (stocks) that ensures attaining or exceeding 25 or 50% of the votes at the higher board of management of the relevant economic entity.
3. The following shall not be considered as concentration:
- 1) the establishment of an economic entity whose purpose or result is the co-ordination of competitive behaviour between economic entities which established the mentioned economic entity or between them and the newly-established economic entity. Actions of that sort shall be considered as concerted actions in accordance with Paragraph 2 of Part 1 of Article 5 of the present Law;
 - 2) the purchase of shares (stocks) of an economic entity by a person whose major type of activities is the performance of financial operations or operations associated with securities if the purchase is made for the further resale of the shares (stocks) provided that the mentioned person does not participate in voting at the higher board of management or at other boards of management of the economic

entity. In a case like that the further resale shall be carried out within a year from the date of the purchase of shares (stocks). Bodies of the Antimonopoly Committee of Ukraine, proceeding from an application which is to be submitted by the mentioned persons and which must substantiate the impossibility of carrying out the further resale, may take a decision on the prolongation of the period;

- 3) actions performed between economic entities which are linked by relations of control in the cases provided for by Part 2 of the present Article with the exception of cases where that sort of control is acquired without permission to be given by the Antimonopoly Committee of Ukraine if the necessity of getting that sort of permission is provided for by laws;
- 4) the acquisition of control over an economic entity or over its part, including acquisition made thanks to the right of an arbitration manager, an official or officer of a body of state power to manage or use the property of the economic entity.
- 5) The acquisition by the bank or other financial institution of assets in the form of an integrated property complex (unified property complex) of shares (stocks) of an economic entity if the following acquisition is provided for in the restructuring plan approved in accordance with to the Law of Ukraine "On Financial Restructuring", by collection of mortgage or other security encumbrance, subject to their subsequent alienation to economic entities not related to the control relations with this bank or with this financial institution, within two years from the date of such ownership.

Article 23. Participants of the Concentration of Economic Entities

The following shall be considered as participants in concentration:

economic entities with respect to which a merger or affiliation is being carried out or must be carried out;

economic entities which acquire or intend to acquire control over an economic entity or economic entities with respect to which control is being acquired or must be acquired;

economic entities whose assets (property), shares (stocks) are being acquired (as property), received for management (use), lease (leasing), concession or must be acquired and their buyers (receivers), acquirers;

economic entities which are or intend to be the founders of (participants in) a newly-established economic entity. An economic entity whose assets (property), shares (stocks) are included in the authorized capital stock of the newly-established economic entity shall also be considered as a participant in the concentration if one of the founders is a body of executive power, a body of local self-government, a body of administrative and economic management and control;

natural and legal persons linked with the participants in concentration mentioned in Paragraphs 2-5 of the present Article by relations of control, which gives grounds for considering the relevant group of persons, in accordance with Article 1 of the present Law, as a single economic entity.

Article 24. Cases Requiring Authorization for the Concentration of Economic Entities

1. Concentration may be carried out only on condition that prior authorization for it is granted by the Antimonopoly Committee of

Ukraine or an administrative board of the Antimonopoly Committee of Ukraine: in the cases provided for by Part 2 of Article 22 of the present Law and other legal acts if:

the total cost of assets or the total product sales of the participants in the concentration, with relations of control being taken into account, in the last financial year, including those abroad, exceed the sum equivalent to 30,000,000 euros defined in accordance with the exchange rate to be established by the National Bank of Ukraine and to be effective on the last day of the financial year while: the assets (total assets) or the sales (total sales) of products, including those abroad, of at least two participants in the concentration, with relations of control being taken into account, exceed the sum equivalent to 4,000,000 euros defined in accordance with the exchange rate to be established by the National Bank of Ukraine and to be effective on the last day of the financial year, or

the total cost of assets or the total sales of product in Ukraine of economic entity, subject to control, or entity whose assets (property), shares (stocks) are being acquired (as property), received for management (use), or at least one of the founders of the created entity, with relations of control being taken into account, exceed the sum equivalent to 8,000,000 euros defined in accordance with the exchange rate to be established by the National Bank of Ukraine and to be effective on the last day of the financial year, and

the assets (total assets) or the sales (total sales) of products, of at least one participant in the concentration, with relations of control being taken into account, including those abroad, exceed

the sum equivalent to 150,000,000 euros defined in accordance with the exchange rate to be established by the National Bank of Ukraine and to be effective on the last day of the financial year.

2. The income (proceeds) from the sale of products (goods, work, services) for the financial year being the nearest one to the year of the application submission, with the deduction of the value-added tax, the excise, and other taxes or duties whose calculation is based on a turnover, shall be applied in the course of the calculation of sales made by participants in the concentration. Finances received from the sale of products within a group of economic entities linked by relations of control, if accounts of that sort are kept, shall not be taken into account.

3. If commercial banks are participants in a concentration, one-tenth of the cost of assets of a commercial bank shall be used for the calculation of both the cost of assets and sales. In cases where insurers are participants in a concentration, net assets shall be used for the calculation of the total cost of assets of the insurer and such incomes from insurance activities that are defined in accordance with laws of Ukraine relating to insurance activities shall be used for the calculation of sales.

4. The procedure of calculating threshold indications to be used for the purposes of the present Article and the procedure peculiarities relating to certain categories of economic entities shall be established by the Antimonopoly Committee of Ukraine.

5. Concentration which requires authorization in accordance with Part 1 of the present Article shall be prohibited until it has been authorized. Until the concentration has been authorized,

participants in the concentration shall refrain from performing such actions that could result in the restriction of competition and in the impossibility of restoring the original state.

6. When the concentration is prohibited in accordance with the Law of Ukraine “On Sanctions”, authorization for concentration shall not be provided.

Article 25. Grounds for Authorizing the Concentration of Economic Entities

1. The Antimonopoly Committee of Ukraine or an administrative board of the Antimonopoly Committee of Ukraine shall authorize concentration if it does not result in the monopolization of the whole market or its significant part or in the substantial restriction of competition on the whole market or in its significant part.

2. The Cabinet of Ministers of Ukraine may authorize concentration which was not permitted by the Antimonopoly Committee of Ukraine because the concentration did not correspond with the conditions provided for by Part 1 of the present Article if a positive effect produced by the concentration on the public interests outweighs negative consequences of the restriction of competition.

3. Authorization in accordance with Part 2 of the present Article may not be granted if restrictions of competition caused by the concentration:

are not necessary for attaining the purpose of the concentration;
constitute a threat to the system of market economy.

Section VI.

CONSIDERATION OF APPLICATIONS AND CASES
SOUNDING IN AUTHORISATION FOR CONCERTED ACTIONS
OR THE CONCENTRATION OF ECONOMIC ENTITIES

Article 26. Submission of an Application for Authorizing
Concerted Actions and the Concentration of Economic Entities

1. Participants of concerted actions, participants in concentration, bodies of power, bodies of local self-government, bodies of administrative and economic management and control, in accordance with a procedure established by the Antimonopoly Committee of Ukraine, shall submit:

an application for authorizing concerted actions – to the Antimonopoly Committee of Ukraine or its territorial offices;

an application for authorizing concentration – to the Antimonopoly Committee of Ukraine.

Participants of concerted actions and concentration, bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall submit a joint application. Restricted access information which is necessary for considering the application may be submitted to the relevant bodies of the Antimonopoly Committee of Ukraine by these persons separately.

The mentioned persons may define a person to represent their interests and to submit the application.

The application and attached documents shall contain the complete and reliable information.

If unreliable information is submitted, the applicants shall bear responsibility in accordance with Article 52 of the present Law.

2. In 15 days from the date of receipt of the application, the application shall be considered as accepted for consideration unless within the period a state commissioner of the Antimonopoly Committee of Ukraine, the head of its territorial office returns the application to the applicant and informs that the application and other documents do not correspond with requirements established by the Antimonopoly Committee of Ukraine and that this fact is the obstacle to their consideration and if concentration is not prohibited in accordance with the Law of Ukraine “On Sanctions”.

If a participant in concentration refuses to give such documents and other information to another participant in the concentration that are necessary for considering the application by the Antimonopoly Committee of Ukraine or by an administrative board of the Antimonopoly Committee of Ukraine, a state commissioner of the Antimonopoly Committee of Ukraine, on the basis of the applicant’s solicitation, shall order the participant in the concentration to give that sort of information within a fixed period. The applicant shall be informed about the order. The application shall be considered as accepted for its consideration when the complete information provided for by the order is received.

3. At the submission of the applicant, the bodies of the Antimonopoly Committee of Ukraine shall hold preliminary consultations on the information and documents necessary for the examination of the relevant application, including for consideration under the simplified procedure, as well as within the period set out in the Part 2 of this Article, for correction of possible deficiencies in the application.

If the applicants refuse to provide information about the final beneficial owners (controllers) of the economic entities – parties to the concentration, the Antimonopoly Committee of Ukraine decides to refuse in consideration of an application for authorizing concentration, concerted actions of economic entities.

The term the final beneficial owners (controller) has the meaning showed in the Law of Ukraine “On Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime or Terrorism Financing, as well as Financing Proliferation of Weapons of Mass Destruction”

4. If concerted actions are authorized by bodies of the Antimonopoly Committee of Ukraine for a fixed period, economic entities shall have the right to submit an application for the prolongation of an authorization period to bodies of the Antimonopoly Committee of Ukraine. Application of that sort shall be submitted not later than three months before the expiration of the authorization period.

5. If concerted actions or concentration is carried out with the use of competition procedures (tenders, auctions, competitions, etc.), an application may be submitted both before and after the competition procedure within a period of 30 days from the date of the winner being awarded the victory unless laws provide for otherwise.

6. If an economic entity performs equivalent concerted actions jointly with different economic entities, an application may be submitted with respect to one concerted action provided that information on the remaining participants in the concerted actions is submitted in accordance with a procedure established by the Antimonopoly Committee of Ukraine.

Article 27. Consideration of an Application for Authorizing Concerted Actions, the Concentration of Economic Entities

1. Bodies of the Antimonopoly Committee of Ukraine shall consider an application for authorizing concerted actions within a period of 3 months from the date when the relevant body of the Antimonopoly Committee of Ukraine accepted the application.

An application for making such changes in actions authorized by a body of the Antimonopoly Committee of Ukraine that do not change the circle of participants and do not concern other product markets shall be considered by bodies of the Antimonopoly Committee of Ukraine within a period of 30 days.

The Antimonopoly Committee of Ukraine or an administrative board of the Antimonopoly Committee of Ukraine shall consider an application for authorizing concentration within a period of 30 days from the date when the application was accepted by the relevant body of the Antimonopoly Committee of Ukraine.

The Antimonopoly Committee of Ukraine or an administrative board of the Antimonopoly Committee of Ukraine shall consider an application according to streamlined proceedings within a period of 25 days from the date of its receipt, if:

only one participant of concentration operates in the territory of Ukraine, or

the combined share of the participants to a concentration in the same commodity market does not exceed 15 percent, or

the shares or the combined shares of the participants in concentration do not exceed 20 percent in the commodity markets in which the products (goods, works, services) are sold, without the acquisi-

tion or sale of which the economic activity of any other participant to the concentration is impossible.

The state commissioner of the Antimonopoly Committee of Ukraine can make a decision on consideration of an application under the procedure provided for in Paragraph 3 of this part, if the circumstances provided for in Paragraphs 5 to 7 of this part, or other circumstances that may affect the decision in accordance with the Paragraph 1 of Article 25 of this Law, requires further study.

2. An application shall not be considered if a request of the applicant for the recall of the application is submitted, and if the concentration is prohibited with accordance to the Law “On Sanctions”, which is fixed by a decision to be taken by the relevant bodies of the Antimonopoly Committee of Ukraine.

3. If an application is left unconsidered, the applicant shall not be deprived of the right to submit a repeated application to the Antimonopoly Committee of Ukraine, its territorial office.

4. Information on notified concerted actions, in particular information on the organization and legal form of participants in the concerted actions, the whereabouts of the participants, their representatives’ offices and branches, the type and content of the concerted actions, may be published in the printed or electronic media or may be promulgated by the Antimonopoly Committee of Ukraine or its territorial office in a different way.

In addition, other information on notified concerted actions and information on concentration may be promulgated unless that sort of information is published or unless the applicant opposes that sort of promulgation.

Article 28. Taking Decisions on Applications for Authorizing Concerted Actions, the Concentration of Economic Entities

1. If grounds for the prohibition against concerted actions, concentration are not identified by bodies of the Antimonopoly Committee of Ukraine, within the period of the consideration of an application which is provided for by Part 1 of Article 27 of the present Law, and concentration is not prohibited with accordance to Law “On Sanctions”, bodies of the Antimonopoly Committee of Ukraine shall take a decision on authorizing the concerted actions, the concentration.

A decision on authorizing the concerted actions, the concentration shall be considered as taken if within the period of the consideration of an application which is provided for by Part 1 of Article 27 of the present Law, the bodies of the Antimonopoly Committee of Ukraine do not start the consideration of a case sounding in concerted actions, concentration, with accordance to Part 1 of Article 30 of the present Law, provided that is not prohibited with accordance to the Law “On Sanctions”.

The last day of such a period of the consideration of an application that is provided for by Part 1 of Article 27 of the present Law shall be the day of taking a decision on authorizing the concerted actions, the concentration in accordance with Part 1 of the present Article.

Article 29. Giving Preliminary Conclusions on Concerted Actions, the Concentration of Economic Entities

1. On the basis of both an application for giving preliminary conclusions and attached information, bodies of the Antimonopoly Committee of Ukraine shall give preliminary conclusions on

concerted actions, whereas the Antimonopoly Committee of Ukraine or an administrative board of the Antimonopoly Committee of Ukraine shall give preliminary conclusions on concentration, to economic entities, bodies of power, bodies of local self-government, bodies of administrative and economic management and control.

The period of the consideration of applications for giving preliminary conclusions on concerted actions, concentration shall be a month.

2. Preliminary conclusions of the relevant body of the Antimonopoly Committee of Ukraine shall be given in the form of a letter stating:

the possibility of authorizing concerted actions, concentration;
the possibility of opposing concerted actions, concentration;
the necessity of authorizing concerted actions, concentration or lack of that sort of necessity;
the insufficiency of information for making any conclusion.

3. Obtaining preliminary conclusions on concerted actions, concentration shall not absolve participants in the concerted actions, participants in the concentration, bodies of power, bodies of local self-government, bodies of administrative and economic management and control from the necessity of submitting an application for authorizing the concerted actions, the concentration to the relevant bodies of the Antimonopoly Committee of Ukraine in the cases provided for by Articles 10 and 24 of the present Law.

Article 30. Consideration of a Case Sounding in Concerted Actions, the Concentration of Economic Entities

1. If grounds for the prohibition against concerted actions, concentration are found and if it is necessary to carry out a complex thorough research or an expert examination, the relevant bodies of the Antimonopoly Committee of Ukraine shall start the consideration of a case sounding in the concerted actions or the concentration, this fact shall be fixed in an order and the applicant shall be notified of this fact in written form. A list of pieces of information to be submitted by the applicant to bodies of the Antimonopoly Committee of Ukraine for their taking a decision on the case shall be attached to the notification of the beginning of the case consideration.

Information on the adoption of the order on the start of the consideration of the case on concerted actions, concentration (name and legal form of participants of the concerted actions, concentrations, type of concerted actions, concentration) shall be published on the official website of the Antimonopoly Committee of Ukraine within 10 working days from the date of such adoption order.

2. Bodies of the Antimonopoly Committee of Ukraine may request the applicant and other persons to submit additional information if its absence hinders the case consideration and may order an expert examination in accordance with the procedure defined by Article 43 of the present Law.

3. The period of the consideration of a case sounding in concerted actions or concentration shall not exceed three months. The course of the period shall start from the date when the complete information was submitted by the applicant (applicants) in full and when an expert conclusion was received in accordance with

Parts 1 and 2 of the present Article. If during the period of the case consideration bodies of the Antimonopoly Committee of Ukraine do not arrive at a decision, it shall be considered that the concerted actions or the concentration is authorized.

The last day of such a period of the case consideration that is provided for by Paragraph 1 of the present Part shall be the day of taking a decision on authorizing the concerted actions, the concentration.

4. The case consideration shall be suspended if it is impossible to consider the case until another case being associated with the original case has been arranged by a body of the Antimonopoly Committee of Ukraine, a court of justice, a court of arbitration or until a different matter being associated with the original case has been arranged by a state body, and at the time of carrying out expert examination. An order relating to the suspension and resumption of the case consideration by bodies of the Antimonopoly Committee of Ukraine shall be issued and the applicant shall be notified of the order.

Bodies of the Antimonopoly Committee of Ukraine shall resume the case consideration when circumstances which caused the suspension of the case consideration are eliminated.

The course of the period of the consideration of a case shall stop from the date when the consideration of the case was suspended. The course of the period of the consideration of a case shall continue from the date when the consideration of the case is resumed.

5. Third parties may participate in the consideration of applications, cases if a decision to be taken by bodies of the Antimonopoly Committee of Ukraine can substantially affect their rights and interests which are protected by the present Law.

A matter relating to the involvement of third parties in the consideration of a case shall be arranged by bodies of the Antimonopoly Committee of Ukraine. An order relating to the involvement of a third party shall be issued and persons participating in the case shall be notified of the order.

Article 31. Decisions Ensuing from Cases Sounding in Concerted Actions, the Concentration of Economic Entities

1. Proceeding from the results of the consideration of cases sounding in concerted actions, the concentration of economic entities, decisions shall be taken:

by the Antimonopoly Committee of Ukraine – on authorizing the concerted actions, on prohibiting against the concerted actions, on authorizing the concentration, on coming to an agreement about constituent documents of economic companies, associations or amendments to them, on prohibiting against the concentration;

by an administrative board of the Antimonopoly Committee of Ukraine – on authorizing the concentration, on coming to an agreement about constituent documents of economic companies, associations or amendments to them, on authorizing the concerted actions with the exception of authorization given on the basis of Part 1 of Article 10 of the present Law, on prohibiting against the concerted actions;

by a state commissioner of the Antimonopoly Committee of Ukraine, the relevant administrative board of a territorial board of the Antimonopoly Committee of Ukraine – on authorizing the concerted actions with the exception of authorization given on the

basis of Part 1 Article 10 of the present Law, on prohibiting against the concerted actions.

2. In case of establishing grounds on prohibition of against the concerted actions, concentration, the bodies of the Antimonopoly Committee of Ukraine shall notify their participants of the content of such grounds and set a 30-day period for granting to participants of concerted actions, concentration of offers on obligations, which are ready to take on participants of such concerted actions, concentration, that eliminate the corresponding negative impact of concerted action, concentration on competition and allow the body of the Antimonopoly Committee of Ukraine on authorizing the concerted actions, concentration. This period may be extended at the request of the participant of concerted action, concentration.

The commitments undertaken by the parties to the concerted actions, concentration, should be proportionate to the substantiated threats to the negative impact on competition, the declared concerted actions, concentration, and the requirements for ensuring control over the implementation of the parties by the concerted actions, concentration of the undertaken obligations should not be excessive.

In order to reconcile the necessary obligations and requirements that will determine the decision of the Antimonopoly Committee of Ukraine on authorizing the concerted actions, concentration, bodies of the Antimonopoly Committee of Ukraine and participants of the concerted actions, concentrations, shall hold appropriate consultations.

Decisions on authorizing concerted actions may be taken for an indefinite or precisely defined period which, as a rule, may not exceed five years.

3. Concerted actions, concentration shall be performed within a year from the date when the decision on authorizing the concerted actions, the concentration was taken unless a longer period is provided for by the decision. If the concerted actions, the concentration are not performed within the above period, participants in the concerted actions, the concentration shall submit a repeated application for authorizing, by bodies of the Antimonopoly Committee of Ukraine, the concerted actions, the concentration.

4. A decision, with the exception of restricted access information and information defined by the relevant state commissioner, the head of a territorial office whose disclosure can infringe the interests of other persons, shall be sent to the applicant.

5. Bodies of the Antimonopoly Committee of Ukraine which took a decision shall not have the right to repeal or amend it with the exception of the cases provided for by Article 58 of the present Law. They shall have the right to correct misprints or obvious arithmetical mistakes in the decision, to interpret their decision, without changing its content, and to make an additional decision if in terms of a matter studied during the case consideration no decision was taken.

6. Information on decisions ensuing from the consideration of applications, cases sounding in concerted actions, concentration shall be published on the official website of the Antimonopoly Committee of Ukraine within 10 working days from the date of such adoption order.

The decision shall be made public in full, except for the information identified by as information with limited access. Information with limited access shall be excluded or paint black or otherwise altered to ensure that it is sufficiently protected and sufficiently transparent to support the decision of the Antimonopoly Committee of Ukraine.

Article 32. Grounds for the Termination of the Consideration of a Case

Sounding in Concerted Actions, the Concentration of Economic Entities

1. The consideration of a case sounding in concerted actions, the concentration of economic entities shall be terminated without taking a decision on the essence of the matter if:

an application of the applicant for the recall of the original application or for the termination of the case consideration is received;

information is not submitted by the applicant within the period defined by bodies of the Antimonopoly Committee of Ukraine, heads of its territorial offices and if the absence of the information hinders the case consideration;

the existence of a decision of the Antimonopoly Committee of Ukraine on the recognition of the stated concerted actions, concentration of such that were made in violation of the legislation on protection of economic competition;

the liquidation of the applicant – legal person;

if concentration is prohibited with accordance to the Law of Ukraine “On Sanctions”.

2. If the consideration of a case is terminated, in accordance with Paragraph 2 or 3 of Part 1 of the present Article, the applicant shall not be deprived of the right to submit a repeated application for authorizing concerted actions, concentration to the Antimonopoly Committee of Ukraine, its territorial office.

Article 33. Procedure of Authorizing Concerted Actions, the Concentration of Economic Entities by the Cabinet of Ministers of Ukraine

1. Within a period of 30 days from the date when the Antimonopoly Committee of Ukraine takes a decision to prohibit concerted actions or concentration, the persons defined by Part 1 of Article 26 of the present Law may submit an application for authorizing the concerted actions or the concentration on the basis of Part 3 of Article 10 or Part 2 of Article 25 of the present Law to the Cabinet of Ministers of Ukraine.

2. The Cabinet of Ministers of Ukraine shall take a motivated decision on authorizing the concerted actions, the concentration or on the refusal to authorize them.

3. The decision of the Cabinet of Ministers of Ukraine on authorizing the concerted actions, the concentration may contain certain requirements and obligations to be satisfied and fulfilled by participants in the concerted actions, the concentration, including requirements and obligations in terms of performing certain actions by the participants. Requirements and obligations of that sort may not be directed towards exercising prolonged control over activities of participants in the concerted actions, the concentration.

4. A procedure of authorizing concerted actions, concentration by the Cabinet of Ministers of Ukraine shall be defined by the Cabinet of Ministers of Ukraine and, in particular, shall provide for:

the establishment of a commission from among independent experts to define positive and negative effects of the concerted actions, the concentration;

the establishment of a procedure of exercising control over the fulfilment of a decision on authorizing the concerted actions, the concentration.

5. If a decision of the Cabinet of Ministers of Ukraine on authorising concerted actions, concentration is no longer valid or is repealed in accordance with an established procedure, bodies of the Antimonopoly Committee of Ukraine shall take a decision on taking measures to restore the original state or on taking other measures to eliminate or ease a negative impact of the concerted actions, the concentration on competition.

Article 34. Duties to Cover Expenditures Associated with the Consideration of Applications

1. The duty on the submission of applications for authorizing concerted actions, concentration, for giving preliminary conclusions in accordance with Articles 14 and 29 of the present Law shall be exacted in the amounts provided for by Part 2 of the present Article.

2. The duty shall be exacted in connection with:

the submission of applications for authorizing concentration – in an amount of 1200 tax-deductible minimum citizen incomes; if the amount of the duty is paid in accordance with Paragraph 4 of the present Part for giving preliminary conclusions on these matters – in an amount of 880 tax-deductible minimum citizen incomes;

the submission of applications for authorizing concerted actions – in an amount of 600 tax- deductible minimum citizen incomes; if the amount of the duty is paid in accordance with

Paragraph 4 of the present Part for giving preliminary conclusions on these matters – in an amount of 280 tax-deductible minimum citizen incomes;

the submission of applications for giving conclusions in accordance with Articles 14 and 29 of the present Law – in an amount of 320 tax-deductible minimum citizen incomes;

the issue of additional certified copies of decisions on the matters provided for by the present Part – in an amount of 0.5 tax-deductible minimum citizen income for each copy.

3. Payment shall be in UAH. Economic entities located outside Ukraine may pay in Euro or USD in accordance with an exchange rate to be set by the National Bank of Ukraine and to be effective on the day of making such payment.

4. Payments shall be transferred to a special fund of the state budget of Ukraine in the capacity of finances owned by the Antimonopoly Committee of Ukraine and shall be used to satisfy needs of the Antimonopoly Committee of Ukraine and its territorial offices unless laws directly provide for otherwise.

5. The non-submission, to the Antimonopoly Committee of Ukraine, its territorial office, of a document substantiating the payment of a duty shall be the basis for leaving the application unprocessed for the period defined by a body of the Antimonopoly Committee of Ukraine, the head of its territorial office. If the amount of the duty is not paid within the period defined by the body of the Antimonopoly Committee of Ukraine, the head of its territorial office, the application shall be left unconsidered; in this case the applicant shall not be deprived of the right to submit a repeated application to the same body.

6. The submission of a repeated application containing circumstances which characterize concerted actions, concentration and which did not substantially change shall not require a repeated payment.

Section VII.

CONSIDERATION OF CASES SOUNDING IN VIOLATIONS OF THE LAWS ON THE PROTECTION OF ECONOMIC COMPETITION

Article 35. Consideration of Cases Sounding in Violations of the Laws on the Protection of Economic Competition

1. The consideration of cases sounding in violations of the laws on the protection of economic competition shall be initiated with issuing an order on the initiation of the case consideration and shall end with taking a decision on the case.

2. In the course of the consideration of a case sounding in violations of the laws on the protection of economic competition, bodies of the Antimonopoly Committee of Ukraine shall:

collect and analyze documents, conclusions made by experts, explanations made by persons, other pieces of information which are evidence in the case and shall take a decision on the case within their powers;

receive explanations from persons participating in the case or from any persons at their request or from persons chosen on the initiative of the bodies.

Article 36. Bases for Initiating the Consideration of a Case

1. Bodies of the Antimonopoly Committee of Ukraine shall initiate the consideration of a case sounding in a violation of the laws on the protection of economic competition on the following bases:

such applications submitted by economic entities, private citizens, associations, offices, organizations that inform about infringing on their rights as a result of the actions or the inactivity which are defined by the present Law as violations of the laws on the protection of economic competition;

such applications submitted by bodies of state power, bodies of local self-government, bodies of administrative and economic management and control that inform about a violation of the laws on the protection of economic competition;

the initiative of bodies of the Antimonopoly Committee of Ukraine.

If the applicant submits a request containing information on a possibility of negative consequences associated with the submission of the application and in order to protect the applicant interests, the case consideration shall be initiated on the initiative of bodies of the Antimonopoly Committee of Ukraine.

2. In cases where a violation of the laws on the protection of economic competition has no tangible impact on conditions of competition on the market, the applicant may be refused the case consideration.

Article 37. Initiating the Consideration of a Case

1. If signs of a violation of the laws on the protection of economic competition are detected, including the consequences of

such a violation, bodies of the Antimonopoly Committee of Ukraine shall issue an order on the initiation of the case consideration.

2. The order on the initiation of the case consideration shall be sent to the defendant within three working days from the date when the order was issued. If the defendant is identified after the initiation of the case consideration, the order for involvement of the defendant in the case together with order on the initiation of the case consideration shall be sent to the defendant within three working days

3. A notification that the case consideration has been initiated shall be sent to the applicant and third persons.

Article 38. Unification and Separation of Cases, the Suspension of the Consideration of a Case and Its Resumption

1. Bodies of the Antimonopoly Committee of Ukraine may issue an order on the unification of several cases into a single case or on the separation of a case for separate consideration.

2. The consideration of a case may be suspended on the initiative of the relevant body of the Antimonopoly Committee of Ukraine or on the basis of an application of a person participating in the case until another case being associated with the original case has been arranged by a body of the Antimonopoly Committee of Ukraine, a court of justice, a court of arbitration or until a different matter being associated with the original case has been arranged by a state body. An order on the suspension of the case consideration and on its resumption shall be issued.

Article 39. Persons Participating in a Case

1. The parties, third persons, their representatives shall be persons participating in a case.

2. The defendant and the applicant shall be the parties to a case (if the case was initiated on the basis of the relevant application).

The person who submitted an application, a complaint about a violation of the laws on the protection of economic competition shall be the applicant.

The person with respect to whom a case sounding in a violation of the laws on the protection of economic competition is considered shall be the defendant.

A person involved in a case because a decision can substantially affect its rights and interests which are protected by the present Law shall be a third person. Bodies of the Antimonopoly Committee of Ukraine shall issue an order on the definition of the third person, which shall be notified to persons participating in the case.

3. Having established that another person should be involved in the case as the defendant, bodies of the Antimonopoly Committee of Ukraine shall issue an order to replace the original defendant or to involve codefendants, which is notified to persons participating in the case.

Article 40. Rights and Obligations of Persons Participating in a Case

1. Persons who participate (participated) in a case shall have the right:

to familiarize themselves with materials of the case (with the exception of restricted access information and information whose disclosure can infringe the interests of other persons who participate (participated) in the case or can hinder the further consideration of the case);

to provide evidence, to submit applications, verbal and written explanations (objections), proposals for questions to be submitted for examination;

to receive copies of decisions on the case (extracts from them with the exception of restricted access information and information whose disclosure can infringe the interests of other persons who participated in the case);

to appeal against decisions in accordance with a procedure established by laws.

2. Persons participating in a case shall be obliged to use their rights fairly.

Article 41. Ensuring Evidence

1. Any actual data that make it possible to establish the existence or non-existence of a violation shall be evidence in a case.

These data shall be established by the following means: explanations made by the parties and third persons, explanations made by officials and private citizens, written evidence, material evidence, and conclusions made by experts.

Such verbal evidence of the parties, third persons, officials or officers, and private citizens that contain data indicating the existence or non-existence of a violation shall be fixed in records.

2. Evidence shall be collected by the Antimonopoly Committee of Ukraine, its territorial offices irrespective of the place where the evidence is.

3. Persons participating in a case shall have the right to give evidence and to prove its reliability (objectivity).

Article 42. Term of Limitation of Bringing to Responsibility for a Violation of the Laws on the Protection of Economic Competition

1. An economic entity shall not be brought to responsibility for a violation of the laws on the protection of economic competition after the expiration of a prescription period.

The prescription period of bringing to responsibility for the violation of the laws on the protection of economic competition shall be a period of five years from the date when the violation was committed or, in case of a prolonged violation, from the date when the violation was terminated.

The prescription period of bringing to responsibility for such violations of the laws on the protection of economic competition that are provided for by Points 13-16 of Article 50 of the present Law shall be a period of three years from the date when the violation was committed or, in case of a prolonged violation, from the date when the violation was terminated.

2. The course of a prescription period of bringing to responsibility shall be suspended for the period when bodies of the Antimonopoly Committee of Ukraine consider the case sounding in the violation of the laws on the protection of economic competition.

Article 43. Ensuring an Expert Examination

1. Bodies of the Antimonopoly Committee of Ukraine on their own initiative or at the solicitation of a person participating in the case shall have the right to establish an expert examination, which shall be fixed in an order.

2. When establishing an expert examination or defining the circle of questions to be addressed to experts, the relevant body of the Antimonopoly Committee of Ukraine shall have the right to ask

the parties and other persons participating in the case about their proposals. The relevant body of the Antimonopoly Committee of Ukraine should give reasons for rejecting the questions proposed by the persons participating in the case. An order relating to the establishment of an expert examination shall mention both questions which require conclusions of experts and a person who will conduct an expert examination.

3. An expert examination shall be conducted by experts from the relevant offices or by other specialists. Any person who has knowledge necessary for making a conclusion may be appointed as expert.

4. A body of the Antimonopoly Committee of Ukraine, if this is necessary for making a conclusion, may give materials of the case to an expert for familiarising himself. At the same time the expert shall have no right to disclose both restricted access information and information contained by the materials of the case whose disclosure can infringe the interests of other persons who participate (participated) in the case or hinder the further case consideration.

5. An expert shall have the right to make a request for the submission of the materials necessary for the conclusion, and to state in the conclusion the circumstances that are relevant to the case, but for which he was not asked. An expert shall have the right to refuse to make a conclusion if given materials are insufficient or if he has no knowledge necessary for performing an entrusted duty.

6. If there is a need to carry out additional expert examinations and if there is a contradiction between conclusions made by a number of experts, the body of the Antimonopoly Committee of Ukraine, may establish an additional or repeated expert examination.

7. An expert shall bear criminal responsibility in accordance with laws for disclosing restricted access information or other information whose disclosure is prohibited, for making a false conclusion or for refusing, without valid reasons, the performance of entrusted duties.

8. Expenditures for conducting an expert examination shall be reimbursed at the expense of the person who committed the violation of the laws on the protection of economic competition. If there is a refusal to reimburse for the mentioned expenditures, the person who bears the expenditures may apply to a court of justice for the reimbursement for the expenditures.

Article 44. Seizure and Arrest of Evidence

1. The seizure of written and material evidence, in particular documents, objects or other media for information which can be evidence or sources of evidence in the case sounding in a violation of the laws on the protection of economic competition shall be performed, on the basis of an order issued by a state commissioner of the Antimonopoly Committee of Ukraine or the head of its territorial office, personally by the state commissioner or the head of its territorial office or by authorized officials of the Antimonopoly Committee of Ukraine or the territorial office if:

the evidence is not given and there are sufficient grounds to consider that documents, objects or other media for information which can be evidence or the source of evidence in the case are at a certain place;

there is a threat that the relevant documents, objects or other media for information can be annihilated.

2. If the originals of written evidence are seized, the Antimonopoly Committee of Ukraine or its territorial office at the solicitation of the person from whom the relevant evidence is seized shall give certified copies of the evidence to the person within three days from the date of the solicitation. Copies of written evidence certified by the Antimonopoly Committee of Ukraine or its territorial office shall have the force of the original when they are produced to other persons.

3. If the seizure of evidence is hindered, for example because of its large number or because only a part of the evidence is of relevance to the case, authorized officials of the Antimonopoly Committee of Ukraine or its territorial offices may receive such extracts from the evidence that are certified in accordance with an established procedure by the person who owns the documents.

At the solicitation of persons from whom the originals of written evidence were seized, the evidence may be returned after the expiration of the period of filing an appeal to a court of justice or a court of arbitration against the relevant decision of the Antimonopoly Committee of Ukraine. A copy of written evidence certified in accordance with an established procedure by the person to whom the original is returned shall be left in materials of the relevant case.

In some cases material evidence just after its inspection and investigation by the relevant body of the Antimonopoly Committee of Ukraine may be returned at the solicitation of the persons from whom it was received before the completion of the case consideration if it is possible to satisfy that sort of solicitation without damaging the case consideration.

4. If it is impossible to seize evidence, a state commissioner, the head of a territorial office of the Antimonopoly Committee of

Ukraine or officials of the Antimonopoly Committee of Ukraine or its territorial office authorized by the state commissioner or the head of a territorial office shall arrest objects, documents, other media for information which can be evidence or the source of evidence in the case.

5. The seizure or arrest of property, objects, documents, other media for information shall be performed in working hours, irrespective of their whereabouts, including premises and vehicles owned by the economic entity, at working places of its employees – on the basis of an order of a state commissioner or the head of a territorial office of the Antimonopoly Committee of Ukraine, at places of abode and at other property of persons – on the basis of the economic court decision.

A statement of the seizure or arrest of property, objects, documents, other media for information shall be drawn up, the statement shall contain the date when it was drawn up, the surname and the position of the person who made the seizure or arrest, the list of seized or arrested property objects, documents, other media for information. The statement shall be signed by such two authorized officials of the Antimonopoly Committee of Ukraine, its territorial offices that made the seizure or arrest. The statement shall also be signed by persons who were present during the seizure or arrest.

If the persons refuse to sign the statement, this fact shall be fixed in the statement. A person shall have the right to give such explanations and remarks with respect to the content of the statement that are attached to the statement and shall have the right to motivate their refusal to sign the statement.

A copy of a statement of the seizure or arrest shall be given to the economic entity whose documents, objects, and other media for information were seized or arrested or shall be given to a representative of the economic entity.

6. The return of seized objects, documents, other media for information shall be fixed in a statement according to a procedure established for seizure.

A state commissioner of the Antimonopoly Committee of Ukraine, the head of a territorial office of the Antimonopoly Committee of Ukraine shall issue an order relating to the return of or the lifting of an arrest with respect to the property, subjects, documents, other media for information.

7. The Antimonopoly Committee of Ukraine, its territorial offices shall ensure the preservation of written and material evidence.

Persons to whom objects, documents, other media for information are transferred for preservation shall bear responsibility provided for by laws for their concealment, waste or lost.

Article 45. Facilitating the Consideration of a Case Sounding in a Violation of the Laws on the Protection of Economic Competition

In order to ensure the consideration of a case sounding in a violation of the laws on the protection of economic competition, in particular in order to perform the actions provided for by Article 44 of the present Law, bodies of internal affairs, customs bodies, and other law protective bodies shall be obliged, within the rights given to them, to render assistance to the Antimonopoly Committee of Ukraine, its territorial offices.

Article 46. Recommendations Given by Bodies of the Antimonopoly Committee of Ukraine

1. Bodies of the Antimonopoly Committee of Ukraine shall have the right to give bodies of power, bodies of local self-government, bodies of administrative and economic management and control, economic entities, associations such recommendations that provide for the termination of actions having signs of violations of the laws on the protection of economic competition, that provide for the removal of causes of the violations and their facilitating conditions and, when the violations are terminated, that provide for the elimination of consequences of the violations. The recommendations shall be given in the form of a letter.

2. Recommendations given by bodies of the Antimonopoly Committee of Ukraine shall be binding, in terms of their consideration, on the bodies or persons to whom they are given. The Antimonopoly Committee of Ukraine, its territorial office shall be informed of the results of the consideration of the recommendations within a period of 10 days from the date when the recommendations were received unless the mentioned period is prolonged by bodies of the Antimonopoly Committee of Ukraine.

3. If recommendations are implemented, if a violation has not caused the substantial restriction or distortion of competition, has not inflicted significant damage on private citizens or society and if the relevant measures have been taken to eliminate the consequences of the violation, the proceedings with respect to a case sounding in a violation of the laws on the protection of economic competition shall not be initiated, whereas initiated proceedings shall be closed.

Article 47. Preliminary Decision on a Case

1. In the course of a case consideration, bodies of the Antimonopoly Committee of Ukraine, on the basis of an application submitted by an economic entity for taking measures to prevent negative and irretrievable consequences for economic entities caused by violations of the laws on the protection of economic competition, may take a preliminary decision on:

the prohibition, with respect to a person whose actions have the signs of a violation (the defendant), against the fulfilment of certain actions, including those directed towards blocking securities;

the binding fulfilment of certain actions if the urgent fulfilment of the actions is necessary in terms of the legitimate rights and interests of other persons.

2. The preliminary decision may be appealed against in accordance with the procedure established by Article 60 of the present Law in a period of 15 days from the date when the decision was received. This period shall not be renewed.

3. If the case is closed because violations allegedly committed by the defendant have not been proved, the defendant may apply to a court of justice for recovering, by the economic entity which submitted the application in accordance with Part 1 of the present Article, damages caused because of the taken preliminary decision.

4. The preliminary decision, unless a shorter period is established in it, shall become invalid when a decision based on the results of the case consideration is taken

Article 48. Decisions on Cases Sounding in Violations of the Laws on the Protection of Economic Competition

1. Bodies of the Antimonopoly Committee of Ukraine, proceeding from the results of the consideration of cases sounding in violations of the laws on the protection of economic competition, shall take decisions, including those on:

the establishment of the fact of a violation of the laws on the protection of economic competition;

the termination of a violation of the laws on the protection of economic competition;

an obligation placed on a body of power, a body of local self-government, a body of administrative and economic management and control to repeal or amend such a decision or to break such agreements that were considered as anticompetitive actions of bodies of power, bodies of local self-government, bodies of administrative and economic management and control;

the establishment of the fact that an economic entity occupies a monopoly (dominant) position on the market;

the compulsory split-up of an economic entity which occupies a monopoly (dominant) position on the market;

the imposition of a fine;

the blocking of securities;

the elimination of consequences of violations of the laws on the protection of economic competition; the repeal of authorization for concerted actions if actions prohibited in accordance with Article 19 of the present Law are committed;

{Paragraph 11 Part 1 of Article 48 excluded based on the Law № 782-VIII as of 12.11.2015}

the close of the case proceedings.

2. Bodies of the Antimonopoly Committee of Ukraine shall published decisions proceeding from the results of the consideration of cases sounding in violations of the laws on the protection of economic competition on the official website of the Antimonopoly Committee of Ukraine within 10 working days from the date of such adoption order. The decision shall be made public in full, except for the information identified by as information with limited access. Information with limited access shall be excluded or paint black or otherwise altered to ensure that it is sufficiently protected and sufficiently transparent to support the decision of the Antimonopoly Committee of Ukraine.

3. Bodies of the Antimonopoly Committee of Ukraine which took a decision shall have no right to repeal or amend it with the exception of the cases provided for by Article 58 of the present Law. They shall have the right to correct misprints or obvious arithmetical mistakes in the decision, to interpret their decision, without changing its content, and to make an additional decision if in terms of a matter studied during the case consideration no decision was taken.

4. In order to protect the public interests or to prevent negative and irretrievable consequences for economic entities, bodies of the Antimonopoly Committee of Ukraine shall take a decision on considering the decision taken in accordance with Part 1 of the present Article, Part 1 of Article 30 of the Law of Ukraine “On the Protection Against Unfair Competition” as a decision suspended in connection with:

the initiation of the proceedings by the economic court, in the case of its invalidation;

the review of the relevant decision (order) of the economic court.

The decision of a body of the Antimonopoly Committee of Ukraine which is provided for by the present Part may be taken on the basis of an application submitted by persons participating in the case or on the initiative of bodies of the Antimonopoly Committee of Ukraine. That sort of decision may be taken both before the submission of the relevant application to a court of economic and after the submission of the applicant unless the economic court, suspends such a decision of the body of the Antimonopoly Committee of Ukraine that is appealed against.

Article 49. Grounds for Closing the Consideration of a Case Sounding in a Violation of the Laws on the Protection of Economic Competition

The consideration of a case sounding in a violation of the laws on the protection of economic competition shall be closed without taking a decision on the subject of the case if:

- the case is not to be considered by the Antimonopoly Committee of Ukraine, its territorial office;
- the defendant or its whereabouts are not established;
- the defendant being a legal person is liquidated;
- a case based on the same grounds was or is being considered by bodies of the Antimonopoly Committee of Ukraine with respect to the same defendant;
- the commitment of the violation is not proved;
- there are other grounds provided for by laws.

Section VIII.

RESPONSIBILITY FOR VIOLATIONS OF THE LAWS
ON THE PROTECTION OF ECONOMIC COMPETITION

Article 50. Violations of the Laws on the Protection of Economic
Competition

The following violations shall be violations of the laws on the protection of economic competition:

- 1) anticompetitive concerted actions;
- 2) abuses of a monopoly (dominant) position;
- 3) anticompetitive actions of bodies of power, bodies of local self-government, bodies of administrative and economic management and control;
- 4) the non-fulfilment of a decision, a preliminary decision taken by bodies of the Antimonopoly Committee of Ukraine or their incomplete fulfilment;
- 5) the commitment of such actions by economic entities participating in concerted actions that are prohibited in accordance with Part 5 of Article 10;
- 6) the delegation of authorities of bodies of power or bodies of local self-government in the cases prohibited in accordance with Article 16 of the present Law;
- 7) the commitment of the actions prohibited in accordance with Article 17 of the present Law;
- 8) the restrictive and discriminatory activities prohibited in accordance with Part 2 of Article 18, Articles 19 and 20 of the present Law;
- 9) the restrictive activities prohibited in accordance with Part 1 of Article 18 of the present Law;

- 10) the non-observance of the conditions provided for by Point 2 of Part 3 of Article 22 of the present Law;
- 11) a violation of provisions of such constituent documents of an economic entity established as a result of concentration that were agreed with bodies of the Antimonopoly Committee of Ukraine if this results in the restriction of competition;
- 12) concentration of economic entities without the relevant authorization to be granted by bodies of the Antimonopoly Committee of Ukraine if that sort of authorization is necessary;
- 13) the non-submission of information to the Antimonopoly Committee of Ukraine, its territorial office within periods established by bodies of the Antimonopoly Committee of Ukraine, the head of a territorial office or by normative and legal acts;
- 14) the submission of incomplete information to the Antimonopoly Committee of Ukraine, its territorial office within periods established by bodies of the Antimonopoly Committee of Ukraine, the head of its territorial office or by normative and legal acts;
- 15) the submission of inauthentic information to the Antimonopoly Committee of Ukraine, its territorial office;
- 16) the erection of barriers to officials of the Antimonopoly Committee of Ukraine, its territorial office when they carry out inspections, examinations, seize or arrest property, documents, objects or other media for information;
- 17) the offering of such pieces of advice by economic entities, associations, bodies of power, bodies of local self-govern-

ment, bodies of administrative and economic management and control that induce to commit violations of the laws on the protection of economic competition or facilitate the commitment of violations of that sort;

- 18) such restrictions of economic activities of an economic entity that result from the fact that the economic entity submitted an application containing information about a violation of the laws on the protection of economic competition to the Antimonopoly Committee of Ukraine, its territorial office;
- 19) the non-fulfilment of such requirements and obligations by participants in concerted actions, concentration that were the stipulation made with respect to the decision on authorizing the concerted actions, the concentration;
- 20) such restrictive activities of associations that are prohibited in accordance with Article 21 of the present Law.

Article 51. Types of Responsibility

A violation of the laws on the protection of economic competition shall entail responsibility established by laws.

Article 52. Fines

1. Bodies of the Antimonopoly Committee of Ukraine shall impose fines on associations, economic entities:

legal persons;

natural persons;

such a group of economic entities being legal and (or) natural persons that in accordance with Article 1 of the present Law

is considered as an economic entity in the cases provided for by Part 4 of the present Article.

2. For the violations provided for by:

Points 1, 2, and 4 of Article 50 of the present Law fines shall be imposed in amounts not exceeding 10% of the income (proceeds) got by an economic entity from the sale of products (goods, work, services) in the accounting year directly preceding the year in which the fine is imposed. If there is an unlawfully got profit which exceeds 10% of the mentioned income (proceeds), a fine shall be imposed in an amount not exceeding the threefold amount of the unlawfully got profit. The amount of an unlawfully got profit may be calculated by means of evaluation;

Points 5, 8, 10, 11, 12, and 19 of Article 50 of the present Law fines shall be imposed in amounts not exceeding 5% of the income (proceeds) got by an economic entity from the sale of products (goods, work, services) in the accounting year directly preceding the year in which the fine is imposed;

Points 9, 13-18 of Article 50 of the present Law fines shall be imposed in amounts not exceeding 1% of the income (proceeds) got by an economic entity from the sale of products (goods, work, services) in the accounting year directly preceding the year in which the fine is imposed.

3. The income (proceeds) got by an economic entity from the sale of products (goods, work, services) shall be the total incomes (proceeds) got by all the legal and natural persons constituting such a group that is considered as an economic entity in accordance with Article 1 of the present Law.

4. If a number of legal and (or) natural persons being economic entities which constitute a group considered as an economic entity had committed such acts (actions, inactivity) that resulted in a violation of the laws on the protection of economic competition by the mentioned economic entity and (if) have the rights without which the commitment of the violation would be impossible and (if) got or can get advantages in competition or other benefits, a fine must be imposed on an economic entity in the person of legal and (or) natural persons who committed the above acts (actions, inactivity) or got or can get the above benefits. A possibility of having an impact on activities of other legal and (or) natural persons being economic entities, a possibility of getting a part of their income shall be considered, in particular, as benefits.

5. If there is no income (proceeds) or if the defendant, in spite of a request of bodies of the Antimonopoly Committee of Ukraine, the head of its territorial office, submits no information about the amount of the income (proceeds), the fine provided for by Paragraph 2 of Part 2 of the present Article shall be imposed in an amount not exceeding 20,000 tax-deductible minimum citizen incomes, the fine provided for by Paragraph 3 of Part 2 of the present Article shall be imposed in an amount not exceeding 10,000 tax-deductible minimum citizen incomes, the fine provided for by Paragraph 4 of Part 2 of the present Article shall be imposed in an amount not exceeding 2,000 tax-deductible minimum citizen incomes.

Where required, the amount of income (proceeds) may be determined by the bodies of the Antimonopoly Committee of Ukraine on the basis of administrative information received from other sources.

6. Decisions on the imposition of fines exceeding 4,000 tax-deductible minimum citizen incomes shall be taken exclusively by

the Antimonopoly Committee of Ukraine, an administrative board of the Antimonopoly Committee of Ukraine at their sessions.

7. If an economic entity worked less than a year, an amount of the fine must be calculated on the basis of the income (proceeds) got by the economic entity before the moment when the decision to impose the fine was taken.

Article 53. Compulsory Split-up

1. If an economic entity abuses its monopoly (dominant) position on the market, bodies of the Antimonopoly Committee of Ukraine shall have the right to take a decision on carrying out the compulsory split-up of the economic entity which occupies a monopoly (dominant) position.

2. The compulsory split-up shall not be applied if:

in terms of organization or territory it is impossible to separate enterprises, structural subdivisions or structural units;

there is a close technological connection between enterprises, structural subdivisions or structural units (if the volume of output used by the economic entity exceeds 30% of the volume of gross output of the enterprise, the structural subdivision or structural unit).

3. The decision of bodies of the Antimonopoly Committee of Ukraine on the compulsory split-up of an economic entity shall be fulfilled within a period which cannot be shorter than six months.

4. The reorganization of an economic entity, subject to compulsory split-up, shall be carried out at its discretion on condition that its monopoly (dominant) position on the market is eliminated.

Article 54. Administrative Responsibility of Officials and Other Employees of Economic Entities, Bodies of Power, Bodies of Local Self-government, Bodies of Administrative and Economic Management and Control

{Part 1 of Article 54 excluded based on the Law № 2596-IV as of 31.05.2005}

2. Officials of bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall bear responsibility in accordance with laws for the commitment of the violations provided for by Points 4, 13-16 of Article 50 of the present Law.

3. Employees of economic entities and associations, bear administrative responsibility in accordance with laws for the commitment of the violations provided for by Point 5 of Article 50 of the present Law.

Article 55. Reimbursement for Damages

1. Persons who suffer damage resulting from a violation of the laws on the protection of economic competition may apply to economic court for the reimbursement for damages.

2. Damages resulting from the commitment of such violations of the laws on the protection of economic competition that are provided for by Points 1, 2, 5, 10, 12, 18, 19 of Article 50 of the present Law shall be reimbursed for in the double amount of the damages by the person who committed the violation.

Section IX.

PROCEDURE OF FULFILLING, VERIFYING, REVIEWING, APPEALING AGAINST DECISIONS, ORDERS, THE PROCEDURE OF CALCULATING PERIODS AND THE EXCHANGE OF INFORMATION

Article 56. Procedure of Fulfilling Decisions and Orders of Bodies of the Antimonopoly Committee of Ukraine, Heads of Territorial Offices of the Antimonopoly Committee of Ukraine

1. A decision (an extract from a decision with the exception of restricted access information and information defined by the relevant state commissioner, the head of a territorial office whose disclosure can infringe the interests of other persons participating in the case consideration), an order of bodies of the Antimonopoly Committee of Ukraine, heads of its territorial offices shall be brought to the notice of the relevant persons, for their fulfilment, by means of sending them by post, by means of handing them against receipt or by notifying the relevant persons of them in a different way.

If it is impossible to deliver the decision as a result of:

the absence of the natural person from the last known place of residence (registration address);

the absence of officials or authorized representatives of the economic entity, the body of administrative and economic management and control from the relevant legal address,

the decision of bodies of the Antimonopoly Committee of Ukraine shall be considered as delivered in ten days from the date when information on the taken decision is published by the printed media (the "Voice of Ukraine", the newspaper of the Verkhovna Rada

(Parliament) of Ukraine; the “Governmental Courier”, the newspaper of the Cabinet of Ministers of Ukraine; the “Official Newsletter of Ukraine”; the printed media of the relevant regional council in accordance with the last known place of residence (registration address), the legal address of the defendant).

2. Decisions and orders of bodies of the Antimonopoly Committee of Ukraine, heads of its territorial offices shall be binding.

3. A person fined by a body of the Antimonopoly Committee of Ukraine shall pay the fine within a period of 2 months from the date when the decision to impose the fine is received.

4. If a fine is imposed on an economic entity in accordance with Part 4 of Article 52, the fine may be paid fully and partially by any legal or natural person who is comprised by the economic entity on which the fine is imposed. The payment of the fine in full by one legal or natural person or by several persons shall absolve the remaining persons, for whom the fine was paid, from the payment of the fine.

5. The additional fine equal to 1.5% of the imposed fine shall be exacted for every day of the nonpayment of the imposed fine. The total amount of additional fines shall not exceed the fine imposed by the relevant decision of a body of the Antimonopoly Committee of Ukraine.

The calculation and imposition of the additional fine shall be discontinued from the date when the economic court takes a decision on exacting the original fine.

The calculation and imposition of the additional fine shall be suspended for the period when the economic court considers, verifies or reviews:

a case sounding in the repeal of a decision of a body of the Antimonopoly Committee of Ukraine on imposing the original fine;
the relevant decision (judgement) of the economic court for supervision;

{Paragraph 6 Part 5 of Article 56 excluded based on the Law № 762-IV as of 15.05.2003}

The calculation and imposition of the additional fine shall be suspended for the period when the body of the Antimonopoly Committee of Ukraine verifies an application submitted by the person on whom the fine was imposed, on verifying and reviewing the decision in the case sounding in violations of the laws on the protection of economic competition.

6. Bodies of the Antimonopoly Committee of Ukraine, proceeding from an application submitted by the person on whom the fine was imposed, shall have the right to postpone or spread the payment of the fine imposed by them.

7. If the fine is not paid within the period provided for by the decision and if the additional fine is not paid, bodies of the Antimonopoly Committee of Ukraine shall exact the original fine and the additional fine in legal form.

8. The economic entity shall send to the Antimonopoly Committee of Ukraine or its territorial office documents confirming the payment of the fine, within five days of the date of payment of the fine.

9. Exacted original fines and additional fines shall be transferred to a special fund of the state budget of Ukraine.

10. Decisions of the relevant bodies and officials of the Antimonopoly Committee of Ukraine on the imposition of administrative penalties on officials and other employees of economic

entities, bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall be fulfilled in accordance with a procedure established by laws.

Article 57. Verification of Decisions, Cases Sounding in Violations of the Laws on the Protection of Economic Competition and Verification of Applications and Cases Sounding in Concerted Actions

1. Decisions taken by an administrative board of a territorial office of the Antimonopoly Committee of Ukraine, a state commissioner of the Antimonopoly Committee of Ukraine, an administrative board of the Antimonopoly Committee of Ukraine on cases sounding in violations of the laws on the protection of economic competition, on applications and cases sounding in concerted actions may be verified on the basis of an application submitted by persons participating in the case or on one's own initiative in accordance with a procedure established by the Antimonopoly Committee of Ukraine.

2. The application for the verification of a decision may be submitted within a period of two months from the date when the decision is received. The period may not be renewed.

3. Decisions taken by an administrative board of a territorial office of the Antimonopoly Committee of Ukraine shall be verified by an administrative board of the Antimonopoly Committee of Ukraine or by the Antimonopoly Committee of Ukraine; decisions taken by a state commissioner of the Antimonopoly Committee of Ukraine, by an administrative board of the Antimonopoly Committee of Ukraine shall be verified by the Antimonopoly Committee of Ukraine.

4. Bodies of the Antimonopoly Committee of Ukraine which verify decisions may suspend the fulfilment of the relevant decision

until its verification has been completed and persons participating in the case shall be notified in writing of the fact.

5. Bodies of the Antimonopoly Committee of Ukraine, proceeding from the results of the decision verification, shall have the right:

to retain the decision without changes;

to change the decision;

to repeal the decision partially and to refer the case for new consideration in terms of the repealed part;

to repeal the decision and to take a new decision or to refer the case for new consideration or to close the case proceedings.

Article 58. Review of Decisions on Cases Sounding in Violations of the Laws on the Protection of Economic Competition and on Applications and Cases Sounding in Concerted Actions, Concentration

1. Bodies of the Antimonopoly Committee of Ukraine on their initiative or on the basis of applications submitted by persons may review decisions taken by them on cases sounding in violations of the laws on the protection of economic competition and on applications and cases sounding in concerted actions and concentration:

if substantial circumstances were unknown and might not be known to the bodies of the Antimonopoly Committee of Ukraine, which resulted in taking the unlawful or groundless decision;

if the decision was taken on the basis of unreliable information, which resulted in taking the unlawful or groundless decision;

if participants in the concerted actions or the concentration do not fulfill such requirements and obligations that were the stipulation made with respect to the decision taken by the bodies of the Antimonopoly Committee of Ukraine on the concerted actions or the concentration in accordance with Part 2 Article 31 of the present Law;

if there are no circumstances on whose basis the decision on authorizing the concerted actions or the concentration was taken;

if there are other grounds provided for by laws of Ukraine.

Bodies of the Antimonopoly Committee of Ukraine which took a decision may suspend its fulfillment until its review has been completed and persons participating in the case shall be notified of the fact in writing.

2. The review of decisions on cases sounding in violations of the laws on the protection of economic competition, on applications and cases sounding in concerted actions and concentration shall be allowed in the cases provided for:

by Paragraphs 2 and 3 of Part 1 of the present Article – within a period of five years from the date when the relevant decision was taken;

by Paragraphs 4 and 5 of Part 1 of the present Article – within the period of the decision validity;

by Paragraph 6 of Part 1 of the present Article – within a period of three years from the date when the decision was taken unless laws provide for otherwise.

3. Bodies of the Antimonopoly Committee of Ukraine, proceeding from the results of the decision review, may:

- retain the decision without changes;
- change the decision;
- repeal the decision;

take such a new decision that is provided for by Articles 31 and 48 of the present Law, by Part 1 of Article 30 of the Law of Ukraine “On the Protection Against Unfair Competition.”

4. If the Antimonopoly Committee of Ukraine, proceeding from the results of the decision review, takes a decision to prohibit the concentration, the state registration of the economic entity established as a result of the concentration shall be annulled in legal form on the basis of a claim to be lodged by the Antimonopoly Committee of Ukraine.

Article 59. Grounds for Changing, Repealing or Considering Decisions of Bodies of the Antimonopoly Committee of Ukraine as Invalid

1. The following shall be the grounds for changing, repealing or considering decisions of bodies of the Antimonopoly Committee of Ukraine as invalid:

- the incomplete investigation of circumstances which are of importance to the case;

- such unproved circumstances that are of importance to the case and that are considered as established;

- the incompatibility of the decision conclusions with the case circumstances;

- the prohibition of the concentration in accordance with the Law of Ukraine “On Sanctions”.

the violation of or the incorrect application of norms of material or procedural law.

2. The violation of or the incorrect application of norms of procedural law may be the grounds for changing, repealing or considering a decision as invalid only if the violation results in taking an incorrect decision.

Article 60. Appealing Against Decisions of Bodies of the Antimonopoly Committee of Ukraine

1. The applicant, the defendant and a third party shall have the right to file an appeal to a court of justice against complete decisions of bodies of the Antimonopoly Committee of Ukraine or against parts of that sort of decisions within a period of two months from the date when the decision was received. The period may not be renewed.

2. Appeals against decisions of the Antimonopoly Committee of Ukraine, an administrative board of the Antimonopoly Committee of Ukraine and a state commissioner of the Antimonopoly Committee of Ukraine shall be taken to the Economic Court of Kyiv city. Appeals against decisions of an administrative board of a territorial office of the Antimonopoly Committee shall be taken to the Economic Courts of the Autonomous Republic of the Crimea, to regional courts, to the Kyiv and Sevastopol City Courts.

3. The acceptance, by the economic court, of an appeal for considering a decision of a body of the Antimonopoly Committee of Ukraine as invalid shall not suspend its fulfillment with the exception of the cases provided for by Part 4 of the present Article.

4. The institution of proceedings, by the economic court, to repeal such a decision of a body of the Antimonopoly Committee of Ukraine that was taken:

in accordance with Part 1 of Article 48 of the present Law, Part 1 of Article 30 of the Law of Ukraine “On the Protection Against Unfair Competition”;

on the basis of the results of the decision verification in accordance with Part 5 of Article 57 of the present Law;

on the basis of the results of the decision review in accordance with Part 3 of Article 58 of the present Law,

and supervisory verification or a review based on both newly-found circumstances and an application of a party to the relevant decision (judgement) of a court of justice, a court of arbitration shall suspend the fulfilment of the mentioned decision of a body of the Antimonopoly Committee of Ukraine for the period of the case consideration, for the period of the verification or review of the relevant decision (judgement) of a court of justice, a court of arbitration unless the body of the Antimonopoly Committee of Ukraine in accordance with Part 3 of Article 48 of the present Law or the economic court defines otherwise.

5. If there are sufficient grounds, the economic court, irrespective of the provisions of Part 4 of the present Article, may suspend the validity of a decision taken by a body of the Antimonopoly Committee of Ukraine.

Article 61. Notification of Court Cases

1. The economic court at the request of the Antimonopoly Committee of Ukraine shall notify the Antimonopoly Committee of

Ukraine of such court cases that are considered on the basis of the laws on the protection of economic competition.

2. A state commissioner of the Antimonopoly Committee of Ukraine, the head of a territory office of the Antimonopoly Committee of Ukraine or officials of the Antimonopoly Committee of Ukraine, its territorial offices empowered by the state commissioner or the head of a territory office respectively shall have the right to familiarize themselves with materials of the cases and to receive copies of documents. The Antimonopoly Committee of Ukraine and its territorial offices shall have the right to join the case in the capacity of such third persons that establish no independent requirements for the subject of the argument if the decision can impact on their rights and duties in the course of exercising state control over the protection of economic competition.

Article 62. Definition and Calculation of Periods in the Laws on the Protection of Economic Competition

1. Periods within which the relevant actions are performed, in particular during the consideration of applications for authorizing concerted actions, concentration of economic entities, during the consideration of cases sounding in violations of the laws on the protection of economic competition, etc., shall be established by the laws on the protection of economic competition, by bodies of the Antimonopoly Committee of Ukraine, by the head of a territorial office of the Antimonopoly Committee of Ukraine. The mentioned periods shall be defined by a calendar date, by the fixation of an inevitable event or by a period.

2. The course of a period calculated in years, months or days shall begin next day after the calendar date determining its

beginning or when the event determining its beginning comes into being.

A period calculated in years shall end in the relevant month and on the relevant date in the last year of the period.

A period calculated in months shall end on the relevant date in the last month of the period. If the end of a period calculated in months coincides with such a month that does not comprise the relevant day, the period shall end on the last day of the month.

If the last day coincides with a holiday, the next working day shall be considered as the day when the period ends.

The last day of a period shall end at 12 o'clock at night; if it is necessary to perform an action within the above period at the Antimonopoly Committee of Ukraine or at its territorial office, the period shall end at the moment when the working day ends.

3. A period shall not be considered as exceeded if necessary documents are handed in to a post office. In case the documents are not received by the Antimonopoly Committee of Ukraine or at its territorial office, the relevant person shall provide the adequate evidence to confirm the fact of sending such documents by post.

Article 63. Exchange of Information

1. Economic entities which are linked by relations of control in accordance with Article 1 of the present Law shall be obliged to ensure the exchange of information between themselves, including information on the cases provided for by Part 2 of Article 22 of the present Law, and shall take other measures in such a way and to such an extent that would ensure the prevention of violations of the laws on the protection of economic competition.

2. The non-fulfilment, by economic entities, of the requirements provided for by Part 1 of the present Article shall not relieve other economic entities, which would have received information and which would have taken other measures, from responsibility.

Section X. FINAL PROVISIONS

1. The present Law shall come into force in a year after its publication with the exception of Points 2 and 3 of the present Section which shall come into force from the date of their publication.

2. Until the present Law has come into force, economic entities shall appeal to bodies of the Antimonopoly Committee of Ukraine for their authorizing concerted actions if the actions take place on the date when the present Law comes into force and if the actions can be authorized in accordance with Article 10 of the present Law.

3. Concerted actions with respect to which an application is submitted in accordance with Point 2 of the present Section shall be considered as authorized unless bodies of the Antimonopoly Committee of Ukraine, within a year from the date when the present Law comes into force, take a decision to prohibit the concerted actions.

4. Article 44 of the present Law in terms of its provisions relating to both the penetration into the place of abode or into other property of a person and making an inspection or a search there shall come into force from the date when a law which provides for a procedure of taking a decision, by the economic court, on

penetrating into the place of abode or into other property of a person, to make an inspection or a search there comes into force.

4-1. During the validation period of the Law of Ukraine “On Financial Restructuring”, the provisions of subparagraph “a” of Paragraph 2 of Part 2 of Article 22 of this Law shall not apply to the cases of purchase or acquisition (by other means) of assets, the receipt (for further management), lease (leasing), concession or acquisition (by other means) of the right to use relevant assets, if such actions are provided for in the restructuring plan approved in accordance with the Law of Ukraine “On Financial Restructuring”.

4-2. The commitment of the acquisition without obtaining permission on concerted actions (to repay debt to a bank or other financial institution for financial services rendered) ownership of a single property complex and/or shares (stocks) of an economic entity that is subject to proper fulfilment of obligations to a bank or other financial institution (provided that they will be disposed of to entities not related to the control relations with that bank or with that financial institution within two years from such acquisition and/or that the entity whose shares (stocks) are acquired are not a bank or other financial institution, and provided that such actions are provided for in a restructuring plan approved in accordance with the Law of Ukraine “On Financial Restructuring”), is not a violation of the legislation on the protection of economic competition and does not entail the liability provided for in Article 52 of this Law.

4-3. The commitment without obtaining permission on concerted actions of the acquisition, the acquisition otherwise relevant assets, the receipt (for further management), lease

(leasing), concession or acquisition (by other means) of the right to use relevant assets, if such actions are provided for in the restructuring plan approved in accordance with the Law of Ukraine “On Financial Restructuring”, is not the violation of the legislation on the protection of economic competition and not entail responsibility according to the Article 52 of the relevant law.

5. The Cabinet of Ministers of Ukraine shall be instructed, within a period of three months from the date when the Law of Ukraine “On the Protection of Economic Competition” comes into force:

to submit, to the Verkhovna Rada (Parliament) of Ukraine, its proposals to bring legislative acts of Ukraine to conformity with the present Law;

to bring its normative and legal acts to conformity with the present Law;

to ensure the review and repeal, by ministries and other central bodies of executive power of Ukraine, of their normative and legal acts which contradict the present Law;

to develop such normative and legal acts that are provided for by the present Law.

6. The following shall be considered as repealed:

the Law of Ukraine “On the Limitation of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activities” (Records of the Verkhovna Rada (Parliament) of Ukraine, 1992, № 21, p. 296; 1993, № 27, p. 291; 1995, № 28, p. 202; 1998, № 34, p. 229);

Point 12 of the Law of Ukraine “On Amending Some Legislative Acts of Ukraine Relating to the Protection of Intellectual Property” (Records of the Verkhovna Rada (Parliament) of Ukraine, 1995, № 13, p. 85);

Point 3 of Section I of the Law of Ukraine “On Amending Some Laws of Ukraine Which Provide for the Indisputable Exaction of Finances from Banking Accounts of Such Legal and Natural Persons That Are Economic Entities” (Records of the Verkhovna Rada (Parliament) of Ukraine, 1998, № 10, p. 36).

President of Ukraine L. Kuchma
The City of Kyiv
January 11, 2001
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