

# UKRAINE

## LAW OF UKRAINE

### **On Limitation of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activities**

The present Law shall define the legal grounds for limitation and forestalling of monopolism, for prevention of unfair competition in entrepreneurial activities, and for exercising State control over the observance of the antimonopoly legislation norms.

#### **Section I**

#### **General provisions**

##### Article 1. Terms defined

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

product denoting a product of activities (including work, services and securities) designed for sale;

market of a product (product market) denoting the sphere of circulation of a product having the same consumer value within which monopoly position is defined;

bodies of State power denoting ministries and other central bodies of executive power, bodies of executive power of the Autonomous Republic of the Crimea, State bodies which regulate both activities of economic entities being natural monopolies and securities markets, State bodies of privatisation, local bodies of executive power;

bodies of administrative and economic management and control denoting amalgamations of enterprises, other economic entities, public organisations when they fulfil functions of management and control within such powers of bodies of State power or bodies of local self-government that were delegated to them;

competition denoting the contest between entrepreneurs when their independent actions limit opportunities of each of them to influence general conditions of product sale on the market and stimulate production of such products that are needed by the consumer;

monopoly position denoting such a dominant position of an economic entity that enables it to restrict competition on the market of a particular product independently or jointly with other economic entities. Position of an economic entity shall be considered as a monopoly one if its share in the market of a particular product exceeds 35 per cent. Position of an economic entity whose share in the market of a particular product is less than 35 per cent may be defined as a monopoly one by a decision taken by the Antimonopoly Committee of Ukraine;

monopoly price denoting such a price that is set by an economic entity occupying monopoly position on the market and that results in restriction of competition or in violation of the consumer rights;

monopoly activities denoting actions (inactivity) of an economic entity (a group of economic entities) on condition that the economic entity (the group of economic entities) occupies monopoly position on the market with respect to production and sale of products as well as such actions (inactivity) of bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control that are directed towards prevention, essential restriction or removal of competition;

monopoly formation denoting such an enterprise, amalgamation or an economic society and other formation that occupies monopoly position on the market;

economic entity denoting such a legal person, irrespective of its organisation, legal and ownership forms, or such a natural person that is engaged in production, sale, and purchase of products or in other economic activities; it also denotes any legal or natural person which exercise control over economic entities, a group of economic entities if one or several of them exercise control over others. Bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control with respect to their activities associated with production, sale, purchase of products or with respect to other economic activities shall be considered as economic entities;

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 complete or partial reproduction of their elements) explanations given by persons and any other publicly announced or documented knowledge.

control denoting a decisive influence exerted by a legal or natural person on economic activities of an economic entity, in particular owing to: the right to own or use all the assets or their considerable part; the right ensuring a decisive influence on complement formation of, voting results, the decisions of managing bodies of an economic entity; conclusions of such agreements and contracts that enable to set conditions of economic activities, to give binding instructions or to perform functions of a managing body of an economic entity: occupation of the position of head, deputy head of an economic entity by the person occupying one or several of the mentioned positions in other economic entities; coincidence of more than half of members of a supervisory board, board of directors, other supervisory or executive bodies of an economic entity.

## Article 2. Application of the present law

1. The present Law shall be applied to the relations in which economic entities take part.

2. The present Law shall not affect the relations resulting from the rights to intellectual property objects with the exception of the cases provided for by the present Law.

3. Laws of Ukraine, in comparison with the present Law, may provide for peculiarities in regulating relations associated with monopoly activities and unfair competition on financial and securities markets.

4. If an international treaty with respect to whose binding nature the Supreme Rada of Ukraine (Parliament) gave its consent fixes rules different from those contained in the present Law and rules of the international treaty shall be applied.

## **Section II**

### **Abuse of monopoly position on the market.**

#### **Unlawful agreements. Discrimination against economic entities**

##### Article 3. Definition of monopoly position

Monopoly position of economic entities on the market with respect to all kinds of capitalized products (industrial and technical production) and with respect to capitals (finances, securities, etc.) being in circulation shall be defined within the territory of Ukraine.

Monopoly position of economic entities on the market with respect to all kinds of consumer products and with respect to all kinds of work and services shall be defined by the Antimonopoly Committee of Ukraine, and its territorial offices within an administrative region or an autonomy (district, settlement).

##### Article 4. Abuse of monopoly position on the market

It shall be considered to constitute abuses of monopoly position:

imposition of such contract terms that create a disadvantage for contractors or imposition of such additional terms that have nothing in common with the subject of a contract, including imposition of a needless product on a contractor;

limitation or stoppage of production or products and their removal from circulation, which resulted or can result in creation or maintenance of deficit on the market or in setting monopoly prices;

partial or complete refusal to sell or purchase a product in the absence of alternative purchase or sales sources, which resulted or can result in creation or maintenance of deficit on the market or in setting monopoly prices;

other actions which resulted or can result in creation of barriers to entry into (withdrawal from) the market with respect to other economic entities;§

setting of such discriminatory prices (tariffs, rates) for one's own product that restrict rights of certain consumers;

setting of monopoly high prices (tariffs, rates) for one's own products, which resulted or can result in violation of the rights of consumers;

setting of monopoly low prices (tariffs, rates) for one's own products, which resulted or can result in restriction of competition.

Article 5. Anticompetitive concerted actions

Anticompetitive concerted actions shall be considered to constitute such concerted actions (agreements) that resulted or can result in:

setting (maintenance) of monopoly prices (tariffs), rebates, extra charges (additional payments), increases of prices;

distribution of markets on the principle of territory, assortment of products, volume of production sale or product purchase, or according to the circle of consumers, or according to other indications, which resulted or can result in their monopolization;

removal of sellers, buyers, and other economic entities from the market or restriction of their access into it.

Article 6. Discrimination against economic entities practised by bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control

1. It shall be considered to constitute discrimination against economic entities practised by bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control:

prohibition against establishment of new enterprises or other organisation forms of entrepreneurship in any sphere of activities as well as putting restrictions on being engaged in some activities, on production of particular kinds of products, which resulted or can result in restriction of competition;

compulsion of economic entities to join associations, concerns, interbranch, regional, and other amalgamations of enterprises, to practise a priority conclusion of contracts, and to provide a primary supply to a particular circle of consumers;

making decisions about centralized distribution of products, which resulted or can result in monopoly position on the market;

establishment of prohibition against sale of products from one region to the republic into another one;

giving particular economic entities such as fax and other privileges that place them in a privileged position with respect to other economic entities, which resulted or can result in monopolization of the market of a particular product;

restriction of the rights of economic entities to purchase and sell products;

establishment of prohibitions or limitations with respect to particular economic entities or groups of economic entities.

2. Conclusion of agreements between bodies of State power, bodies of local self-government, bodies of administrative and economic management and control, conclusion of agreements between those bodies and economic entities as well as their giving natural or legal persons powers to perform the actions provided for by item 1 of the present article shall also be considered to constitute discrimination against economic entities.

3. Exemptions from the provisions of the present article may be established by legislative acts of Ukraine for the purpose of ensuring national security, defence, public interests.

### **Section III**

#### **Unfair competition**

##### Article 7. Unfair competition

Legal grounds for protection against unfair competition shall be defined by the Law of Ukraine on Protection against Unfair Competition.

#### Section IV

State control over the observance of antimonopoly legislation

##### Article 8. State policy in the sphere of limitation of monopolism in entrepreneurial activities

1. State policy in the sphere of limitation of monopolism in entrepreneurial activities, taking such measures concerning demonopolization of the economy, financial, material, technical, information, consultative, and other support of economic entities that favour development of competition shall be carried out by such bodies of State power, bodies of local self-government, bodies of administrative and economic management and control that are empowered to carry it out.

2. Demonopolization of the economy and development of competition in Ukraine shall be provided in accordance with the special programme elaborated by the Cabinet of Ministers of Ukraine and is approved by the Supreme Rada (Parliament) of Ukraine.

3. State control over the observance of the antimonopoly legislation, protection of interests of economic entities and consumers against violations of the antimonopoly legislation including protection against abuses of monopoly position and against unfair competition shall be exercised by the Antimonopoly Committee of Ukraine in accordance with its competence.

##### Article 9. Antimonopoly Committee of Ukraine

The structure, competence, organisation of activities, and accountability of the Antimonopoly Committee of Ukraine shall be defined by the Law of Ukraine on the Antimonopoly Committee of Ukraine.

Articles 10, 11, 12 are abrogated.

##### Article 13. Access to information

Economic entities, bodies of State power, bodies of local self-government, bodies of administrative and economic management and control as well as their officials – by order of State commissioners, heads of territorial offices of the Antimonopoly Committee of Ukraine – shall be obliged to provide documents,

written and oral explanations, other information, including restricted information, necessary to the Antimonopoly Committee of Ukraine and its territorial offices for carrying out the tasks provided for by legislation.

Article 14. Control over establishment, reorganisation (merger, annexation), liquidation of economic entities

To prevent monopoly position of particular economic entities on the market (monopolization of product markets), establishment, reorganization (merger annexation), liquidation of economic entities, establishment of associations, concerns, interbranch, regional, and other amalgamations of enterprises, transformation of bodies of State power, bodies of local self-government, bodies of administrative and economic management and control into the mentioned amalgamations, entry of one or several economic entities into amalgamations in the cases provided for by legislation shall be carried out on condition that consent of the Antimonopoly Committee of Ukraine is received.

Article 15. Control over acquisition or lease of property

Purchase acquisition – by other means, - receipt - for the purpose of management (use), -of the shares (stocks) as well as assets (property) in the form of integrated complexes of property of economic entities or of their structural subdivisions, lease of integrated complexes of property of economic entities or of their structural subdivisions shall be carried out by economic entities in the case provided for by legislation on condition that consent of the Antimonopoly Committee of Ukraine is received.

Article 16. Compulsory split-up of monopoly formations

1. In the cases when economic entities abuse their monopoly position on the market, the Antimonopoly Committee of Ukraine and its territorial offices shall have the right to adopt a decision about compulsory split-up of monopoly formations.

2. Compulsory split-up shall not be applied in the following cases:  
if it is found impossible to make organizational or territorial separation of enterprises, structural subdivisions or structural units;

if there is a close technological connection of enterprises, structural subdivisions or structural units (the share of the inner turnover in the gross output of the enterprise (amalgamation, etc) accounts for less than 30 per cent).

3. A decision of the Antimonopoly Committee of Ukraine (its territorial office) on a compulsory split-up of enterprises (amalgamations, etc) shall be fulfilled within a fixed period which cannot be less than six months.

Reorganization of monopoly formation, subject to a compulsory split-up, shall be carried out at the discretion of the monopoly formation on condition that its monopoly position on the market is eliminated.

Article 17 and 18 are abrogated

## Section V

### Responsibility for violations of the antimonopoly legislation

#### Article 19. Imposition of fines on economic entities being legal person

Fines on economic entities being legal person shall be imposed by the Antimonopoly Committee of Ukraine for:

Commitment of the actions provided for by articles 4-6 of the present Law, evasion of fulfilment or a tardy fulfilment of decisions of the Antimonopoly Committee of Ukraine (its territorial office) on termination of violations of the Antimonopoly legislation, renewal of the initial state of affairs or change of agreements contradicting the present Law - to the amount of 5 per cent of the receipts from sale of production (products, work, services) got by the economic entity in the last account year preceding the year in which the fine is imposed;

establishment, reorganization (merger, annexation), liquidation of economic entities (including an economic society, association, concern or other amalgamation of enterprises); entry of one or several economic entities into an amalgamation; purchase, acquisition - by other means, - receipt - for the purpose of management (use), - of shares (stocks) as well as assets (property) in the form of integrated complexes of property of economic entities or of their structural subdivisions as well as lease of integrated complexes of property of economic entities or of their structural subdivisions without consent of the Antimonopoly Committee of Ukraine, administrative boards, State commissioners, and territorial offices of the Antimonopoly Committee of Ukraine if legislation provides for the necessity to receive that sort of consent - to the amount of 5 per cent of the receipt from sale of production (products, work, services) got by the economic entity in the last account year preceding the year in which the fine is imposed; lack of submission, a tardy submission of deliberately falsified information to the Antimonopoly Committee of Ukraine (its territorial office) – to the amount of 0.5 per cent of the receipts from sale of production (products, work, services) got by the economic entity in the last account year preceding the year in which the fines is imposed.

If it is impossible to calculate receipts of the economic entity or the receipts are absent, the fines mentioned in paragraph 2 and 3 of Part 1 of the present article shall be imposed to the amount of 10,000 tax-free minimum private citizen incomes, and the fines mentioned in paragraph 4 of Part 1 – to the amount of 200 tax-free minimum private citizen incomes.

If the economic entity worked less than a year, fines shall be calculated on the basis of the receipts got by the economic entity in the period preceding the violation.

Decisions about imposition of fines exceeding 1,000 tax-free minimum private citizen incomes shall be taken exclusively by the Antimonopoly Committee of Ukraine and administrative boards at their sittings.

Fifty per cent of fines shall be transferred to the State budget and 50 per cent of fines – to the special extrabudgetary fund established for the purpose of developing protecting competition.

Article 20. Administrative responsibility of officials and private citizens engaged in entrepreneurial activities

Officials of bodies of State power, bodies of local self-government, bodies of administrative and economic management and control, enterprises, institutions as well as private citizens engaged in entrepreneurial activities without creation of a legal person shall bear administrative responsibility according to legislation for:

commitment of the actions provided for by articles 4-6 of the present Law;  
lack of submission, a tardy submission or submission of deliberately falsified information to the Antimonopoly Committee of Ukraine and its territorial offices;  
evasion of fulfilment or a tardy fulfilment of decisions of the Antimonopoly Committee of Ukraine and its territory offices.  
Fines shall be recovered in accordance with court procedure.

Article 21. Withdrawal of unlawfully got profit

Profit got unlawfully by economic entities as a result of violations of articles 4 and 5 of the present Law shall be recovered by a court of justice or a court of arbitration to the State budget.

Article 22. Reparation of damages

Damages caused by abuse of monopoly position, anticompetitive concerted actions, discrimination against economic entities by bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control shall be repaired in accordance with the procedure provided for by the civil legislation of Ukraine.

## **Section VI**

### **Examination of cases and applications by the Antimonopoly Committee of Ukraine and appealing against its decisions**

Article 23. Examination of cases on violations of the antimonopoly legislation

The Antimonopoly Committee of Ukraine, State commissioners, administrative boards, and territorial offices of the Committee, within their competence, shall examine cases on violations of the antimonopoly legislation and proceeding from the examination results shall take decisions in accordance with the procedure provided for by legislation.



Article 23<sup>1</sup>. Examination of applications for giving consent to establishment, reorganisation and liquidation of economic entities

The Antimonopoly Committee of Ukraine, administrative boards, State commissioners, and territorial offices of the Antimonopoly Committee of Ukraine, within their competence, shall examine applications for giving their consent to establishment, reorganisation (merger, annexation), liquidation of economic entities (including an economic society, association, concern or other amalgamation of enterprises); entry of one or several economic entities into an amalgamation; purchase, acquisition - by other means, - receipt – for the purpose of management (use), - of shares (stocks) as well as assets (property) in the form of integrated complexes of property of economic entities or of their structural subdivisions and proceedings from the examination results shall take decisions in accordance with the procedure provided for by legislation.

Article 23<sup>2</sup>. Duty on submission of an application for giving consent to establishment, reorganisation, and liquidation of economic entities

A duty shall be paid on submission of an application for giving consent to establishment, reorganisation (merger, annexation), liquidation of economic entities (including an economic society, association, concern or other amalgamation of enterprises); entry of one or several economic entities into an amalgamation; purchase, acquisition – by other means – receipt – for the purpose of management (use), - of shares (stock) as well as assets (property) in the form of as lease of integrated complexes of property of economic entities or of their structural subdivisions.

Amounts of the mentioned duties shall be distributed at the following ratio: 50 per cent of the amounts of the duties shall be transferred to the State budget and 50 per cent – to the State body for the purpose of reimbursing its expenses incurred as a result of examination of the application, making examination by experts, etc.

The list of duties, their amounts, the periods and procedure of payment shall be defined by the Cabinet of Ministers of Ukraine.

Article 24. Procedure of appealing against decisions of the Antimonopoly Committee of Ukraine

1. In cases of disagreement with decisions of the Antimonopoly Committee of Ukraine and its territorial offices, economic entities, bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control as well as other interested persons shall have the right to apply to a court of justice or a court of arbitration with an application for annulment of or making complete or partial changes in the decisions of the Antimonopoly Committee of Ukraine and its territorial offices.

2. Submission of an application shall not suspend fulfilment of decisions for the period of case examination in a court of justice or a court of arbitration unless

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the court of justice or the court of arbitration unless the court of justice or the court of arbitration suspended the mentioned acts.

3. Damages caused by unlawful decisions of the Antimonopoly Committee of Ukraine and its territorial offices shall be repaired at the expense of the State budget irrespective of the blame borne by specific officials of the Antimonopoly Committee of Ukraine and its territorial offices.

Article 25. Procedure of fulfilling decisions of the Antimonopoly Committee of Ukraine

1. Decisions of the Antimonopoly Committee of Ukraine and its territorial offices shall be fulfilled within the periods provided for by the decisions

2. Economic entities upon whom the Antimonopoly Committee of Ukraine imposed fines shall pay them within a 30-day period since the date of receipt of the decision about imposition of the fine. An additional fine equal to 1.5 per cent of the original fine shall be recovered for everyday of the delay in payment of the original fine.

3. If an economic entity refuses to pay the original and additional fines, they shall be recovered on the basis of a decision taken by a court of justice or a court of arbitration.

4. The Antimonopoly Committee of Ukraine shall have the right to postpone payment of a fine proceeding from an application submitted by the economic entity upon which the fine was imposed.