

THE LAW OF UKRAINE

On Economic Competition Protection

(The Official Journal of the Verkhovna Rada (OJVR), 2001, No. 12, p. 64)

{As amended by the Laws

No. 380-IV (380-15) of 26.12.2002, OJVR, 2003, No. 10-11, p. 86

No. 762-IV (762-15) of 15.05.2003, OJVR, 2003, No. 30, p. 247

No. 1344-IV (1344-15) of 27.11.2003, OJVR, 2004, No. 17-18, p. 250

No. 2285-IV (2285-15) of 23.12.2004, OJVR, 2005, No. 7-8, p. 162

No. 2505-IV (2505-15) of 25.03.2005, OJVR, 2005, No. 17, No. 18-19, p. 267

No. 2596-IV (2596-15) of 31.05.2005, OJVR, 2005, No. 26, p. 348

No. 3486-IV (3486-15) of 23.02.2006, OJVR, 2006, No. 31, p. 269

No. 1276-VI (1276-17) of 16.04.2009}

{In the text of the Law words "arbitration court" in all cases are excluded under the Law No 762-IV (762-15) of 15.05.2003}

{In the text of the Law the word "court" in all cases is replaced with words "economic court" in the appropriate case pursuant to the Law No 2596-IV (2596-15) of 31.05.2005}

This Law determines legal foundation for support and protection of economic competition, restriction of monopolism in economic activity and aims at providing effective operation of economy of Ukraine on the basis of development of competitive relations.

Section I

GENERAL PROVISIONS

Article 1. Definition of Terms

For the purpose of this Law, the following terms shall mean:

economic competition (competition) is a rivalry between the undertakings aimed at obtaining, by virtue of their own achievements, advantages over other undertakings, resulting in consumers, undertakings having an opportunity of having choice between several sellers, buyers, and in the fact that a certain undertaking can not determine conditions for goods turnover on the market;

information is data of any kind and form, stored at any carriers (including correspondence, books, marks, illustrations (maps, diagrams, organigrams, figures and schemes), photographs, holograms, movie, video, microfilms, audio records, data bases of computer systems or full or partial reproduction of their elements), explanations of persons and any other publicly declared or recorded data;

control is a decisive influence of one or more associated legal and/or natural persons on economic activity of an undertaking or its part, being exerted directly or through other persons, particularly via the right of possession or enjoyment of all assets or significant part thereof; the right, providing the decisive influence on formation of structure, results of voting and decisions of management body of undertaking; conclusion of agreements and

contracts, enabling to determine conditions of economic activity, give bounding instructions or perform functions of management body of undertaking; substitution of capacity of the chairman, the deputy chairman of the supervisory board, [management] board, other supervising or executive body of an undertaking by a person, who had already been earlier in one or more said capacities at other undertakings; being in more than a half of capacities of members of the supervisory board, [management] board, other supervising or executive bodies of undertakings be person, who already are in one or more said capacities at other undertaking. Associated are legal and/or natural persons, who jointly or in coordination conduct business activity, including exerting jointly or in coordination influence on business activity of undertaking. Particularly, as associated natural persons shall be deemed those being spouses, parents and children, brothers and (or) sisters; (Paragraph four of Article 1 as amended by adding pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

a small and medium enterprise is an undertaking, whose income (revenue) resulted from the sale of products (goods, works, services) for the latest financial year or value of assets will not exceed an amount, equivalent to 500 thousand Euro, determined at the rate of the National Bank of Ukraine, which was valid on the last day of the financial year, if in markets, in which this entrepreneur operates, the competitors, having a significantly bigger market share, are available;

a monopolization is achieving by the undertaking the monopoly (dominant) position in a market of commodity, supporting or strengthening this position;

bodies of power are ministries and other central bodies of executive power, the Supreme Council of the Autonomous Republic of Crimea, state bodies performing regulation of activity of entities of natural monopolies, market of securities, state bodies of privatization, the National Council of Ukraine on Television and Radio Broadcasting, local bodies of executive power;

an association is a union of legal and (or) natural persons, including the association of enterprises, as well as public organizations;

bodies of administrative management and control are the undertakings in respect of performing by them management or control functions within authorities of bodies of power or bodies of local self-government, delegated to them;

bodies of the Antimonopoly Committee of Ukraine are the Antimonopoly Committee of Ukraine, continuing and temporary administrative boards of the Antimonopoly Committee of Ukraine, a state authorized [person] of the Antimonopoly Committee of Ukraine, administrative boards of the territorial branches of the Antimonopoly Committee of Ukraine;

a market of commodity (commodity market) is a sphere of turnover of commodity (interchangeable commodities), for which in the course of certain time and within the limits of certain territory both demand and supply are available;

an undertaking is a legal entity irrespective of organizational legal form and form of ownership or a natural person providing activity in manufacturing, selling, purchasing commodities, other economic activity, including performing control over other legal or natural person; group of undertakings, if one or more of them perform control over others. As undertakings shall also be deemed bodies of state power, bodies of local self-government, as well as bodies of administrative management and control in respect of their activity in manufacturing, selling, purchasing commodities or other economic activity. As economic activity may not be considered the activity of the natural person purchasing consumer goods for final consumption;

a commodity is any item of economic turnover, including products, works, services, documents confirming obligations and rights (particularly securities).

Article 2. Scope of Application of Law

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

2. This Law shall apply to relations which influence or may influence the economic competition in the territory of Ukraine.

Article 3. Legislation on Protection of Economic Competition

1. The legislation on the protection of economic competition shall be based on norms, established by the Constitution of Ukraine (254к/96-ВР), and consist of this Law, laws of Ukraine "On the Antimonopoly Committee of Ukraine" (3659-12), "On the Protection against Unfair Competition" (236/96-ВР), other regulatory legal acts, adopted pursuant to these laws.

2. If an international treaty of Ukraine, obligation of which is approved by the Verkhovna Rada of Ukraine, determines other rules, than those being included in this Law, the rules of the international treaty shall apply.

3. Peculiarities of application of the legislation on the protection of economic competition, particularly in respect of certain industry branches, may be fixed exclusively by introducing amendments to this Law.

Article 4. State Policy in Field of Development of Economic Competition and Restriction of Monopolism

1. The state policy in the field of development of economic competition and restriction of monopolism in economic activity, taking measures concerning demonopolization of economy, financial, material technical, information, consultation and other support of undertakings, assisting the development of competition, shall be conducted by the bodies of state power, bodies of local self-government and bodies of administrative management and control.

2. undertakings, bodies of power, bodies of local self-government, as well as bodies of administrative management and control shall be bound to assist the development of competition and not perform acts which may have negative impact on the competition.

3. Bodies of state power, to the competence of which regulation and administration in appropriate branches of economy belongs, shall monitor markets of these branches for the purpose of analyzing and forecasting their development. (Article 4 added by a part pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

4. The state control over compliance with the legislation on the protection of economic competition, the protection of interests of undertakings and consumers to prevent violations thereof shall be carried out by the bodies of the Antimonopoly Committee of Ukraine.

5. Bodies of power, bodies of local self-government, bodies of administrative management and control shall be obliged to promote the Antimonopoly Committee of Ukraine in performing its powers in the field of

support and protection of economic competition, restriction of monopolism and control over compliance with the legislation on the protection of economic competition.

6. For the purpose of equal application of the legislation on the protection of economic competition, including the legislation on the protection against unfair competition, the Antimonopoly Committee of Ukraine shall give recommendatory explanations on matters of application of this legislation.

Section II

ANTICOMPETITIVE CONCERTED ACTIONS OF UNDERTAKINGS, ABUSE OF MONOPOLY (DOMINANT) MARKET POSITION

Article 5. Concerted Actions

1. "Concerted actions" shall mean conclusion of agreements in any form by undertakings, making decisions in any form by associations, as well as any other concerted competitive behaviour (activity, inactivity) of undertakings.

Concerted actions shall also mean the establishment of an undertaking, an association the purpose or consequence of the establishment of which is the coordination of competitive behaviour between the undertakings, which established the mentioned undertaking, association, or between them and the newly-established undertaking, or joining such an undertaking. (Indent two of Article 5(1) in the wording of the Law No 2596-IV (2596-15) of 31.05.2005)

2. The persons who take or intend to take concerted actions are deemed to be participants of concerted actions.

Article 6. Anticompetitive Concerted Actions of Undertakings

1. Anticompetitive concerted actions shall mean concerted actions which have resulted or may result in prevention, elimination or restriction of competition.

2. Concerted actions shall be considered as anticompetitive if they, in particular, relate to:

1) setting prices or other conditions of procurement or sale of goods;

2) restriction of manufacturing, commodity markets, technical and technological development, investments or establishing control over them;

3) distribution of markets or sources of supply on an area basis, in accordance with procurement or sales turnover, circle of sellers, buyers or consumers, or otherwise;

4) distortion of the results of bids, auctions, contests, tenders;

5) elimination from the market or restriction of access to the market (withdrawal from the market) for other undertakings, buyers, sellers;

6) applying different conditions to equivalent agreements with other undertakings, which results in the creation of a disadvantage for these undertakings in terms of competition;

7) concluding agreements provided that other undertakings assume supplementary obligations, which according to their content or in terms of trade customs and other fair customs in entrepreneurial activities do not relate to the subject of these agreements;

8) significant restriction of the competitive ability of other undertakings on the market without objective reasons thereto.

3. Anticompetitive concerted actions shall also mean taking similar actions (inactivity) by undertakings on the commodity market, which has resulted in or may result in prevention, elimination or restriction of competition in case if the analysis of situation on the commodity market gives evidence that there are no objective reasons for taking such actions (inactivity). (Article 6 as supplemented by the paragraph pursuant to the Law No 2596-IV (2596-15) of 31.05.2005)

4. Taking anticompetitive concerted actions shall be prohibited and entails relevant responsibility according to the legislation.

5. The person, who has taken anticompetitive concerted actions, but who voluntarily informed the Antimonopoly Committee of Ukraine or its territorial office of them earlier than other participants of such actions with submitted information being essentially important for taking decision on the case, shall be discharged from liability for taking anticompetitive concerted actions, provided for by Article 52 of this Law.

Bodies of the Antimonopoly Committee of Ukraine on the basis of motivated request in the interest of investigation of the case on violation of the legislation on the economic competition protection shall ensure confidentiality of information about a person. (Article 6(5) as supplemented by the indent pursuant to the Law No 2596-IV (2596-15) of 31.05.2005)

The person, stated in this part, may not be exempted from liability, if this person:

has not taken effective measures to stop anticompetitive concerted actions upon notification thereon of the Antimonopoly Committee of Ukraine;

was the initiator of or directed anticompetitive concerted actions;

has not submitted all evidences or information on the relevant violation committed by him/her which he (she) knew of and which he/she could obtain without hindrance.

Article 7. Concerted Actions of Small or Medium Enterprises

The provisions of Article 6 of this Law shall not apply to any voluntary concerted actions of small and medium enterprises concerning joint procurement of goods, which do not result in significant restriction of competition and improve competitive ability of small and medium enterprises.

Article 8. Concerted actions Relating to the Supply and Use of Goods

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

use of goods, supplied by the participant, or goods of other suppliers;

procurement of other goods from other undertakings or sale of other goods to other undertakings or consumers;

procurement of goods, which by their nature or in terms of trade customs and other fair customs in entrepreneurial activities do not relate to the subject of the agreement;

setting of prices or other conditions of the contract for sale of the supplied goods to other undertakings or consumers.

2. The provisions of Article 6 of the present Law shall be applied to the concerted actions provided for by paragraph one of this Article if such actions:

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

restrict access to the market for other undertakings;

result in economically unjustified raise of prices or in the goods deficiency.

Article 9. Concerted actions Relating to Intellectual Property Rights

1. The provisions of Article 6 of this Law shall not be applied to agreements on the transfer of intellectual property rights or on granting the right to use the intellectual property in the part restricting economic activities of the agreement party, who the right is transferred to, unless this restriction exceeds the limits of legitimate rights of the subject of intellectual property right.

2. It shall be considered that restrictions relating to the measure of transferred rights, the period and territory of validity of the authorization to use the object of the intellectual property right, as well as to the type of activity, the sphere of use and the minimal output, do not exceed the limits of the rights mentioned in paragraph one of this Article.

Article 10. Concerted Actions which may be Authorized

1. The concerted actions, provided for by Article 6 of this law, may be authorized by the appropriate bodies of the Antimonopoly Committee of Ukraine, if their participants prove, that these actions promote:

the improvement production, procurement or sale of goods;

technical, technological and economic development;

the development of small and medium enterprises;

the optimization of export or import of goods;

the development and application of the uniform specifications or standards for goods;

the rationalization of production.

2. The concerted actions, provided for in paragraph one of this Article, may not be authorized by the bodies of the Antimonopoly Committee of Ukraine, if the competition is significantly restricted on the whole market or in its significant part.

3. The Cabinet of Ministers of Ukraine may authorize concerted actions, which have not been authorized by the Antimonopoly Committee of Ukraine pursuant to paragraph two of this Article, if participants of concerted actions prove that the positive effect for public interests prevails over adverse consequences of competition restriction.

4. The authorization provided for in paragraph three of this Article may not be given if:

participants of concerted actions apply restrictions which are not required 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 take concerted actions, provided for in this Article, until authorization has been granted by bodies of the Antimonopoly Committee of Ukraine or the Cabinet of Ministers of Ukraine. (Part five of Article 10 Law No 2596-IV (2596-15) of 31.05.2005)

Article 11. Typical Requirements for Concerted Actions

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

2. Concerted actions, meeting the typical requirements for certain types of concerted actions, specified by the Antimonopoly Committee of Ukraine, shall be authorized and shall need no authorization of the bodies of the

Antimonopoly Committee of Ukraine pursuant to paragraph one of Article 10 of this Law, if this is directly stated in the decision of the Antimonopoly Committee of Ukraine on establishment of typical requirements. (Paragraph two of Article 11 as amended by Law No 2596-IV (2596-15) of 31.05.2005)

Article 12. Monopoly (Dominant) Position of an Undertaking

1. An undertaking shall be deemed to hold a monopoly (dominant) position on the commodity market, if:

there are no competitors on this market;

it experiences no considerable competition due to restricted opportunities of access for other undertakings concerning procurement of raw material, materials and sale of commodities, or due to the barriers for access to the market for other undertakings, availability of benefits or other circumstances.

2. As monopoly (dominant) position shall be deemed a position of an undertaking, whose part on the commodity market exceeds 35 percent, unless it proves, that it experiences a considerable competition.

3. As monopoly (dominant) position may also be deemed the position of an undertaking, if its part on the commodity market equals or is less than 35 percent, but it does not experience a considerable competition, particularly, due to comparatively small parts of the market, belonging to the competitors.

4. It shall be considered, that each of two or more undertakings holds a monopoly (dominant) position on the commodity market, if, concerning certain type of commodity they have do not compete between themselves or in case of an insignificant competition, and in respect of them, taken together, one of conditions, provided for by paragraph one of this Article, is fulfilled.

5. As monopoly (dominant) shall also be considered a position of each of several undertakings, if, concerning them, such conditions are fulfilled:

overall part of no more, than three undertakings, having the biggest shares on the market, exceeds 50 percent;

overall part of no more than five undertakings, having the biggest shares on the market, exceeds 70 percent -

and hereby they fail to prove, that in respect of them the conditions of part four of this Article are not fulfilled.

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

1. Abuse of monopoly (dominant) position on the market shall mean actions or inactivity of the undertaking, holding a monopoly (dominant) position on the market, which have resulted in or may result in the prevention, elimination or restriction of competition, or in the infringement of interests of other undertakings or consumers, which would be impossible provided that there existed a considerable competition on the market. (Article 13(1) as amended by the Law No 2596-IV (2596-15) of 31.05.2005)

2. The following, in particular, shall be deemed abuse of monopoly (dominant) position on the market:

1) setting such prices or other conditions for procurement or sales of goods, which would be impossible provided that there existed a considerable competition on the market.;

- 2) applying different prices or different conditions for equivalent agreements with undertakings, sellers or buyers without objectively justified reasons therefore;
 - 3) stipulating that in order to conclude an agreement an undertaking should take additional obligations, which by their nature or in terms of trade customs and other fair customs in entrepreneurial activities do not relate to the subject of the agreement;
 - 4) restricting manufacturing, markets or technical development, which caused or may cause damage to other undertakings, buyers, sellers;
 - 5) partial or full refusal to procure or sell goods with no alternative sources of their sale or procurement;
 - 6) significant restriction of competitive ability of other undertakings on the market without objectively justified reasons therefore;
 - 7) creating barriers to access to the market (withdrawal from the market) or elimination of sellers, buyers or other undertakings from the market.
3. Abuse of monopoly (dominant) position on the market shall be prohibited and entails responsibility pursuant to the legislation.

Article 14. Conclusions in Respect of Qualification of Acts

For the purpose of preventing violations of the legislation on the protection of economic competition, increasing in predictability of its application, the bodies of the Antimonopoly Committee of Ukraine may give the undertakings, on the basis of information provided by them, the conclusions in a form of recommendatory explanations in respect of compliance of undertakings' actions with provisions of Articles 6, 10 and 13 of this Law.

Section III

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

Article 15. Anticompetitive Actions of Bodies of Power, Bodies of

Local Self-Government, Bodies of Administrative

Management and Control

1. Anticompetitive actions of bodies of power, bodies of local self-government, bodies of administrative management and control shall be passing any acts (decisions, orders, commands and regulations), giving written or oral instructions, concluding agreements or any other acts or omission of the bodies of power, bodies of local self-government, bodies of administrative management and control (of collegial body or an official), which have resulted in or may result in prevention, elimination or distortion of competition.

2. As anticompetitive actions of bodies of power, bodies of local self-government, bodies of administrative management and control, particularly, shall be considered:

a banning or obstructing creating new enterprises or performing entrepreneurship in other organizational forms in any field of activity, as well as setting restrictions for performing separate types of activity, for manufacturing, procuring or selling certain types of commodities;

a direct or indirect enforcement of undertakings to enter into associations, concerns, inter-branch, regional or other forms of communities or performing concerted actions of concentration of undertakings in other forms; (Paragraph three of part two of Article 15 as amended by adding pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

a direct or indirect coercing undertakings to conclude priority contracts, to high-priority deliveries of commodities to certain consumers or high-priority of their procurement from certain sellers;

any action towards a centralized distribution of commodities, as well as markets sharing between the undertakings on an area basis, by range of commodities, by volume of their sales or procurement or by circle of consumers or sellers;

setting a prohibition for sale of certain commodities from one region in the other, or authorization to sell commodities from one region in the other in certain volume or by performing certain conditions;

granting single undertakings or groups of undertakings the benefits or other advantages, putting them in a privilege position in respect to competitors, which results in or may result in prevention, elimination, restriction or distortion of competition;

an action, due to which for single undertakings are created unfavorable or discriminating activity conditions as compared to the competitors;

an action, which sets bans and restrictions of enterprise's independence, including concerning procurement or sales of commodities, pricing, formation of activity and development programs, dispose of profit.

3. Performing anticompetitive actions by bodies of power, bodies of local self-government, bodies of administrative management and control shall be prohibited and entail responsibility pursuant to law.

***Article 16. Ban to Delegate Authorities of Bodies of Power and
Bodies of Local Self-Government***

The bodies of power and bodies of local self-government shall be prohibited to delegate separate power authorities to associations, enterprises and other undertakings, if this results in or may result in prevention, elimination, restriction or distortion of competition.

***Article 17. Ban to Incite to Violations of Legislation on the Protection of Economic
Competition and Their Legitimization***

Actions or omission shall be prohibited for bodies of power, bodies of local self-government, bodies of administrative management and control (of

collegial body or an official), constituting incitement of undertakings, bodies of power, bodies of local self-government, bodies of administrative management and control to committing violations on the protection of economic competition, creating conditions for commitment of such violations or their legitimization.

Section IV

RESTRICTING AND DISCRIMINATING ACTIVITY OF UNDERTAKINGS, ASSOCIATIONS

Article 18. Restricting Activity of Undertakings, Associations

1. undertakings, associations shall be prohibited to incite other undertakings to commit violations of the legislation on the protection of economic competition or to promote to commit such violations.

2. undertakings, associations shall be banned to coerce other undertakings to:

perform anticompetitive concerted actions, defined by Article 6 of this Law;

perform concerted actions, defined by Articles 7, 8, 9 and 10 of this Law;

participate in concentration of undertakings, determined by Article 22 of this Law.

Article 19. Unlawful Use of a Market Position by an Undertaking

1. undertakings, which obtained a permit from the appropriate bodies of the Antimonopoly Committee of Ukraine to perform concerted actions pursuant to part one of Article 10 of this Law, undertakings, concerted actions of which are permitted pursuant to Article 7, 8 and 9 of this Law, shall be prohibited to set restrictions for the economic activity of undertakings, not being applied, as a rule, towards other undertakings, or apply, without objectively good causes a different approach to different undertakings.

2. undertakings, which, pursuant to part three of Article 10 of this Law have obtained the permission of the Cabinet of Ministers of Ukraine to perform concerted actions, independently of availability therein a monopoly position shall be banned to perform actions to be deemed an abuse of monopoly (dominant) position, pursuant to Article 13 of this Law.

3. undertakings, stated in part one of this Article, shall be prohibited to incite other undertakings to grant to any undertakings, with no objective reasons available, the privilege conditions in economic activity.

4. Provisions of parts one and three of this Article shall also apply to the undertakings, if small or enterprises depend on them due to absence of alternative sources of obtaining or delivering certain kind of commodity. A seller of certain kind of commodities shall be considered depending upon a buyer, of this buyer obtains from such a seller, except for traditional trade discount or remunerations in other form, a special remuneration, not being obtained by other similar buyers.

Article 20. Discrimination of Competitors by undertakings

undertakings, having a considerably more significant market influence as compared with small or medium enterprises, being their rivals, shall be banned to create obstructions in the economic activity to small and medium enterprises, particularly, to perform actions, prohibited pursuant to parts one and three of Article 19 of this Law.

Article 21. Restricting Activity of Associations

1. It shall be banned to conduct the restricting activity of associations through refusal of admission of the undertaking to such association, which puts it into unfavorable position in the competition, if such refusal is unsubstantiated and unjustified.

2. Paragraph one of this Article shall be applied to associations, if, concerning them, the following conditions are fulfilled:

an association may unite all participants of certain market or territory;

an association is established or acts to achieve goals, other than to obtain profit;

the creation and activity of the association does not result in economic concentration and anticompetitive concerted actions pursuant to this Law.

Section V

CONTROL OVER CONCENTRATION OF UNDERTAKINGS

Article 22. Concentration of Undertakings

1. For the purpose of preventing monopolization of commodity markets, abuse of monopoly (dominant) position, restriction of competition, bodies of the Antimonopoly Committee of Ukraine shall exercise state control over the concentration of undertakings (hereinafter referred to as "concentration")

2. The following is deemed to be concentration:

1) a merger of undertakings or an affiliation of one undertaking to another one;

2) direct or indirect (through other persons) takeover by one or several undertakings of one or several undertakings or parts of undertakings, particularly, by means of:

a) the direct or indirect procurement, acquisition (by other means) of assets in the form of integral property complex or structural unit of an undertaking; obtaining for further management, rent, lease, concession or acquisition otherwise of the right to use assets in the form of integral property complex or structural unit of an undertaking, including procurement of assets of an undertaking being liquidated;

б) the appointment or election of a person as the head, the deputy head of the supervisory board, direction or mentioned positions at other supervisory or executive bodies of an undertaking if that person already occupies one or several of the mentioned positions in other undertakings; or the creation of a situation, where more than half of offices of the members of the supervisory board, direction, other supervisory or executive bodies of two or more undertaking(s) are occupied by the same persons;

(Point "б" of subparagraph 2 of Article 22(2) was excluded on the basis of the Law No 2596-IV (2596-15) of 31.05.2005)

3) an establishment of an undertaking by two and more undertakings, which will independently perform economic activities for a long period of time, but at the same time such establishment does not result in competitive behavior between the undertakings, which established this undertaking, or between them and the newly-established undertaking; (Article 22(2) as supplemented with the subparagraph pursuant to the Law No 2596-IV (2596-15) of 31.05.2005)

4) direct or indirect procurement, acquisition by other means or obtaining shares for further management of shares, ensuring achievement or exceeding 25 or 50 percent of votes in the superior management body of the appropriate undertaking.

3. The following is not deemed to be concentration:

1) the establishment of an undertaking, the purpose or consequence of the establishment of which is the coordination of competitive behavior between the undertakings, which established the mentioned undertaking, or between them and the newly-established undertaking. Such actions shall be deemed to be concerted actions pursuant to the indent 2 of the Article 5(1) of this Law;

2) the procurement of shares of an undertaking by a person whose major type of activities is the performance of financial operations or operations associated with securities if the procurement is made for the purpose of their subsequent resale, provided that the said person takes no part during voting in the superior body or other management bodies of the undertaking. In this case the subsequent resale shall be made within one year from the day of procurement of the shares. Bodies of the Antimonopoly Committee of Ukraine, proceeding from a request which is to be submitted by the mentioned persons and which shall substantiate the impossibility of further resale, may take a decision to extend the term;

3) actions taken between the undertakings, being in control relations, in the cases, provided for by paragraph two of this Article, except for the cases of gaining such control without authorization from the Antimonopoly Committee of Ukraine, if the necessity of authorization is provided for by the legislation;

4) takeover of an undertaking or its part, including takeover reached due to the right to manage and dispose of its property by the arbitral administrator, official or functionary of state authorities.

Article 23. Participants of Concentration of Undertakings

Participants shall mean:

undertakings, in respect of which a merger or affiliation fulfills or may fulfill;

undertakings, which gain or intend to gain control over an undertaking, and the undertakings, in respect of which the control is being gained or shall be gained; (Paragraph three of Article 23 as amended by adding pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

undertakings, assets (property), shares of which are being acquired as property, obtained for administration (enjoinment), rent, leasing, concession or shall be obtained, and their buyers (recipients), acquirers;

undertakings, being or having an intent to become founders (participants) of a newly-established undertaking. In the case, when one of the founders is a body of executive power, a body of local self-government, a body of administrative management and control, as participant of concentration shall also be deemed an undertaking, assets (property), shares of which are contributed to the statutory fund of the newly-established undertaking;

natural and legal persons, linked with participants of concentration, stated in paragraphs two-five of this Article, by relations of control, giving reasons to recognize relevant group of persons pursuant to Article 1 of this Law as a single undertaking.

Article 24. Cases Requiring authorization for Concentration of Undertakings

1. Concentration shall be possible only on condition of the receipt of prior authorization of the Antimonopoly Committee of Ukraine or the administrative board of the Antimonopoly Committee of Ukraine:

1) in cases, provided for by Article 22(2) of this Law and other regulations, when aggregate value of assets or aggregate sales turnover of the concentration participants, with control relations being taken into account, in the last financial year, including those abroad, exceeds the amount equivalent to 12 million Euros, determined in accordance with the exchange rate established by the National Bank of Ukraine and effective on the last day of the financial year while: (Indent two of Article 24(1) put in the wording of the Law No 2596-IV (2596-15) of 31.05.2005)

value (aggregate value) or the sales turnover (aggregate sales turnover) of goods, including those abroad, of at least two participants of the concentration, with control relations being taken into account, exceeds the amount equivalent to 1,000,000 euros determined in accordance with the exchange rate established by the National Bank of Ukraine and effective for each on the last day of the financial year, and

the value (aggregate value) of assets or the sales turnover (aggregate sales turnover) of goods in Ukraine of at least one participant of the concentration, with control relations being taken into account, exceeds the amount equivalent to 1,000,000 euros determined in accordance with the exchange rate established by the National Bank of Ukraine and effective on the last day of the financial year;

2) in cases, provided for by Article 22(2) of this Law and other regulations, irrespective of aggregate value of assets or aggregate sales turnover of goods of participants of concentration, when:

a share on a certain commodity market of any participant of concentration or an aggregate share of participants of concentration, with control relations being taken into account, exceeds 35 percent, and a concentration is performed on this or allied commodity market.

(Article 24(1) as supplemented by subparagraph 2 pursuant to the Law No 2596-IV (2596-15) of 31.05.2005)

2. The amounts (proceeds) derived by the undertakings concerned from the sale of products and the provision of works and services after deduction of value added tax, excise duty and other taxes directly related to turnover in the financial year preceding the submission of an application, shall be applied when calculating the sales turnover of the participants of concentration. Amounts derived from the sales of goods within one group of undertakings, being in control relations, if such accounting is being kept, shall not be taken into account.

3. If commercial banks are participants of a concentration, one-tenth of the value of assets of the commercial bank shall be used for the calculation of both the value of assets and sales turnover. In cases where insurers are participants of a concentration, net assets shall be used for the calculation of the aggregate value of assets of the insurer and the incomes from insurance activities determined in accordance with the legislation of Ukraine relating to insurance activities shall be used for the calculation of sales turnover..

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

5. Concentration requiring authorization pursuant to paragraph one of this Article shall be prohibited until it has been authorized. Until the concentration has been authorized, participants of the concentration shall refrain from performing such actions that could result in the restriction of competition and in the impossibility of restoring the initial state..

Article 25. Grounds for Authorizing the Concentration of Undertakings

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 monopolisation or in the significant restriction of competition on the whole market or in its significant part.

2. The Cabinet of Ministers of Ukraine may authorize concentration in the instance when it has not been permitted by the Antimonopoly Committee of Ukraine because such concentration fails to meet conditions provided for by paragraph one of this Article if a positive effect for the interests produced by the concentration outweighs adverse consequences of the restriction of competition.

3. Authorization in accordance with paragraph two of this Article may not be granted if restrictions of competition caused by the concentration:

are not necessary for meeting the objectives of the concentration;

constitute a threat to the system of a market economy.

Section VI

CONSIDERATION OF APPLICATIONS AND CASES CONCERNING GRANTING PERMISSION FOR CONCERTED ACTIONS, CONCENTRATION OF UNDERTAKINGS

Article 26. Submission of Application for Granting Permission for Concerted Actions, Concentration of Undertakings

1. Participants of concerted actions, participants of concentration, bodies of power, bodies of local self-government, bodies of administrative management and control in order, specified by the Antimonopoly Committee of Ukraine, shall apply:

for granting a permission for concerted actions - to the Antimonopoly Committee of Ukraine or to its territorial branches;

for granting a permission for concentration - to the Antimonopoly Committee of Ukraine.

Participants of concerted actions, concentration, authorities, bodies of local self-government, bodies of administrative management and control shall file a joint application. Information with restricted access, required for consideration of the application, may be separately submitted to appropriate bodies of the Antimonopoly Committee of Ukraine by these persons.

Said persons may define a person to represent their interests and submit an application.

The application and documents attached shall include full and reliable information.

In the case of submission of non-reliable information the applicants shall be liable pursuant to Article 52 of this Law.

2. An application shall be deemed as taken for consideration after 15 days from the day of its receipt, if within this term a state authorized person of the Antimonopoly Committee of Ukraine, head of its territorial branch have not returned to an applicant its application noticing, that this and other documents do not comply with requirements, fixed by the Antimonopoly Committee of Ukraine, and this bars its consideration.

In the event, if a participant of concentration refuses other participant - an applicant to submit documents and other information, required for the consideration by the Antimonopoly Committee of Ukraine or by the administrative board of the Antimonopoly Committee of Ukraine of the application, the state authorized person of the Antimonopoly Committee of

Ukraine, on the basis of appeal of an applicant, shall take a direction on submission by the participant of concentration of such information within set term. On the direction taken the notice shall be given to an applicant. The application shall be deemed as taken for consideration upon obtaining the full information, provided by this direction.

3. If a permission for concerted actions was granted by the bodies of the Antimonopoly Committee of Ukraine for specified term, the undertakings shall have the right to apply to the bodies of the Antimonopoly Committee of Ukraine for extension of permission validity. Such permission shall be submitted for three months prior to expiry of term of permission validity.

4. In the case, if concerted actions or a concentration are carried out using contest procedures (bidding, contests and tenders), an application may be submitted both prior to commencement of contest procedure and thereafter, but not later than in thirty days from the date of announcement of the winner, unless otherwise provided by the law.

5. If an undertaking performs equivalent concerted action with different undertakings, an application may be filed concerning one concerted action subject to provision of information regarding all other participants of concerted actions in an order, specified by the Antimonopoly Committee of Ukraine.

Article 27. Consideration of Application for Granting Permission for

Concerted Actions, Concentration of undertakings

1. Bodies of the Antimonopoly Committee of Ukraine shall consider the application for granting permission for concerted actions within three months from the day of receipt thereof by the relevant body of the Antimonopoly Committee of Ukraine.

An application for altering in the concerted actions, the permission for which was obtained from a body of the Antimonopoly Committee of Ukraine, not changing a circle of participants and not applying to other commodity markets, shall be considered by the bodies of the Antimonopoly Committee of Ukraine within thirty days.

The Antimonopoly Committee of Ukraine or the administrative board of the Antimonopoly Committee of Ukraine shall consider the application for granting permission for concentration within thirty days from the day of receipt thereof for consideration by an appropriate body of the Antimonopoly Committee of Ukraine.

2. The application shall be left shelved in the event of receipt from an applicant of petition for revocation of application, whereon the relevant bodies of the Antimonopoly Committee of Ukraine shall pass a direction.

3. Leaving an application shelved shall not deprive an applicant of right to repeatedly apply to the Antimonopoly Committee of Ukraine, its territorial branch.

4. Information on declared concerted actions, namely concerning: organizational and legal form of participants of concerted actions, their location and of their representative offices, branches, as well as on type and contents of concerted actions may be published in print or electronic mass media or otherwise made public by the Antimonopoly Committee of Ukraine or its territorial branch.

Besides, other information concerning declared concerted actions, as well as information on concentration, if such information had been earlier publicly

declared or an applicant has no objection against such publication, may be promulgated.

Article 28. Passing Decisions on Applications for Granting Permission for Concerted Actions, Concentration of undertakings

1. If, within the term of consideration of an application, provided by part one of Article 27 of this Law, the bodies of the Antimonopoly Committee of Ukraine have not started the consideration of the concerted actions or concentration case, the decision on granting permission for concerted actions or concentration shall be deemed as passed.

2. As the day of passing the decision on granting permission for concerted actions, concentration, pursuant to part one of this Article, shall be deemed the final day of consideration of application, provided by part one of Article 27 of this Law.

Article 29. Provision of Preliminary Conclusions Concerning Concerted

Actions, Concentration of Undertakings

1. Bodies of the Antimonopoly Committee of Ukraine shall provide the undertakings, bodies of power, bodies of local self-government, bodies of administrative management and control, on the basis of application for provision of preliminary conclusions with information attached, with preliminary conclusions on concerted actions;
The Antimonopoly Committee of Ukraine or the administrative board of the Antimonopoly Committee of Ukraine - with [preliminary conclusions] on concentration.

Term of consideration of applications for provision of preliminary conclusions concerning concerted actions, concentration shall be one month.

2. Preliminary conclusions of the relevant body of the Antimonopoly Committee of Ukraine shall be provided as a letter, stating:

an opportunity for providing a permission for concerted actions, concentration;

a opportunity of refusal to provide a permission for concerted actions, concentration;

a necessity or absence of necessity to obtain a permission for concerted actions, concentration;

insufficiency of information required for any conclusion.

3. Obtaining preliminary conclusions concerning concerted actions, concentration shall not free participants of concerted actions, concentration, bodies of power, bodies of local self-government, bodies of administrative management and control from the necessity to apply to relevant bodies of the Antimonopoly Committee of Ukraine for permission for concerted actions, concentration in the events, provided by Articles 10 and 24 of this Law.

Article 30. Trial of the Case on Concerted Actions, Undertakings Concentration

1. In the case of detection of reasons for prohibition of concerted actions, concentration, as well as in the event of necessity of complicated advanced

study or expertise the relevant bodies of the Antimonopoly Committee of Ukraine shall start the trial of the case on concerted actions or concentration, whereon the direction shall be taken and a person submitted an application shall be notified in writing. Along with notice on commencement of trial of the case the list of information to be submitted by an applicant for the bodies of the Antimonopoly Committee of Ukraine to pass a decision on the case, shall be sent.

2. Bodies of the Antimonopoly Committee of Ukraine may request from an applicant (applicants) and other persons additional information, if its absence bars the trial of the case, as well as fix an expertise in an order, determined by Article 43 of this Law.

(Part two of Article 30 as amended by adding pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

3. Term of trial of the case on concerted actions or concentration shall not exceed three months. The running of the term shall start from the day of submission by an applicant (applicants) of the whole information and obtaining of expert's conclusion pursuant to parts one and two of this Article. If within the term of trial of case by the bodies of the Antimonopoly Committee of Ukraine the decision has not been taken, it shall be deemed, that the permission for concerted actions or concentration is given. (Paragraph one of part three of Article 30 as amended by adding pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

As a day of passing the decision on provision of permission for concerted actions, concentration shall be deemed the last day of trial of the case, provided by paragraph one of this Article.

4. A trial of a case shall be stopped in the event of impossibility of trial of case prior to solving by the body of the Antimonopoly Committee of Ukraine, the economic court a case, associated therewith, or prior to solving by a state body a matter, associated therewith and in the course of performing expertise. On suspension of trial of case and resumption thereof by the bodies of the Antimonopoly Committee of Ukraine the direction shall be taken, whereon an applicant shall be notified. (Paragraph one of part four of Article 30 as amended by adding pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

Bodies of the Antimonopoly Committee of Ukraine shall renew trial of case upon remedy of circumstances, stipulated its suspension.

A running of the term of trial of case shall be stopped on the day of suspension of trial of case. From the day of resumption of consideration the running of the term of trial of case shall be continued.

5. In consideration of applications, cases third parties may be participating, if a decision of the Antimonopoly Committee of Ukraine may significantly infringe their rights and interests, being protected by this Law.

A question of attracting third persons to participate in trial of case shall be defined by the bodies of the Antimonopoly Committee of Ukraine. On attracting a third person the bodies of the Antimonopoly Committee of Ukraine shall take a direction, whereon the persons, participating in the case, shall be noticed.

Article 31. Decision in Cases on Concerted Actions, Concentration of

Undertakings

1. On the results of trial of cases on concerted actions, concentration the decision shall be taken:

by the Antimonopoly Committee of Ukraine - concerning granting permission for concerted actions; granting permission for concentration; coordination of statutory documents of economic partnerships, associations or alterations thereto; prohibition of concentration;

by the administrative board of the Antimonopoly Committee of Ukraine - concerning granting permission for concentration; coordination of statutory documents of economic partnerships, associations or alterations thereto; granting permission for concerted actions, except for permissions granted on the basis of part one of Article 10 of this Law; prohibition of concerted actions;

by the state authorized person of the Antimonopoly Committee of Ukraine, relevant administrative board of the territorial branch of the Antimonopoly Committee of Ukraine - concerning granting permission for concerted actions, except for permissions, granted on the basis of part one of Article 10 of this Law; prohibition of concerted actions.

2. A decision of the bodies of the Antimonopoly Committee of Ukraine on granting permission for concerted actions, concentration may be stipulated by performance by participants of concerted actions, concentration of certain requirements and obligations, eliminating or mitigating negative influence of concerted actions, concentration on the competition. Such conditions and obligations may apply, particularly, to the restriction concerning administration, use or disposal of property, as well as obligations of the undertaking to fulfill the disposal of property.

A decision on granting permission for concerted actions may be given for uncertain or particularly specified term, which, as a rule, may not exceed five years.

3. Concerted actions, concentration shall be performed within a year from the day of passing decision on granting permission for concerted actions, concentration, if a longer term has not been specified in the decision. If concerted actions, concentration have not been fulfilled within this term, the participants of concerted actions, concentration may file a new application for granting permission from the bodies of the Antimonopoly Committee of Ukraine for concerted actions, concentration.

4. The decision shall be sent to an applicant, except for information with restricted access thereto, as well as for information, determined by the relevant state authorized person, head of information branch, disclosure of which [information] may cause damage to interests of other persons.

5. Bodies of the Antimonopoly Committee of Ukraine, which took the decision, shall have no right to cancel or change it, except for cases, provided by Article 58 of this Law. They shall have the right to rectify clerical or arithmetical errors, made in the decision, explain own decision, without changing thereby the content of it, as well as pass a supplementary decision, if the decision has not been taken on any matter, which was investigated in the course of trial of the case.

6. Information on decisions, taken on the results of consideration of applications, cases on concerted actions, concentration may be published in the "Ofitsiyny visnyk Ukrainy", other print or electronic mass media or otherwise made public.

Article 32. Reasons for Closure of Trial of Case on Concerted

Actions, Concentration of Undertakings

1. Trial of the case on concerted actions, concentration of undertakings shall be closed without decision being taken on the merits, in the event of:

receipt from an applicant of petition for revocation of the application or for closure of trial of the case;

non-submission by an applicant of information within the term, defined by the bodies of the Antimonopoly Committee of Ukraine, the head of its territorial branches, of absence of such information bars the trial of the case.

2. Closure of trial of the case shall not deprive an applicant of the right to file to the Antimonopoly Committee of Ukraine, its territorial branches a new application for approving concerted actions, concentration.

Article 33. Order of Granting by the Cabinet of Ministers of Ukraine

Permission for Concerted Actions, Concentration

1. Within thirty days from the day of passing the decision by the Antimonopoly Committee of Ukraine on prohibition of concerted actions or concentration the persons, defined in part one of Article 26 of this Law, may appeal to the Cabinet of Ministers of Ukraine with an application for granting permission for appropriate concerted actions or concentration on the basis of part three of Article 10 or part two of Article 25 of this Law.

2. The Cabinet of Ministers of Ukraine shall take a reasoned decision on granting permission for concerted actions, concentration or on refusing to grant such permission.

3. The decision of the Cabinet of Ministers of Ukraine on granting permission for concerted actions, concentration may include certain requirements and obligations for participants of concerted actions, concentration, including those concerning performance by them of certain acts. Such requirements and obligations shall not be aimed at performing permanent control over activity of participants of concerted actions, concentration.

4. The order of granting by the Cabinet of Ministers of Ukraine permission for concerted actions, concentration shall be set by the Cabinet of Ministers of Ukraine, and, particularly, provide:

establishing a commission from independent experts to appraise positive and negative consequences of concerted actions, concentration;

setting an order of carrying out control over performance of the decision on granting permission for concerted actions, concentration.

5. In the event of loss of effect of the decision of the Cabinet of Ministers of Ukraine on granting permission for concerted actions, concentration or invalidation thereof the bodies of the Antimonopoly Committee of Ukraine, in a prescribed order, shall pass the decision on taking measures to set the initial position or other measures, eliminating or mitigating negative influence of concerted actions, concentration on the competition.

Article 34. Payment for Indemnification of Expenses Relating to Trial of Cases

1. For submission of applications for granting permission for concerted actions, concentration, providing conclusions pursuant to Articles 14 and 29 of this Law a fee shall be paid in amounts, provided by part two of this Article.

2. A fee shall be paid:

for applications for granting permission for concentration - in amount of 300 tax-exempt minimums of incomes of citizens, and in the case of payment of fee sum pursuant to paragraph four of this part for provision of preliminary conclusions on these matters - in amount of 220 tax-exempt minimums of incomes of citizens;

for applications for granting permission for concerted actions - in amount of 150 tax-exempt minimums of incomes of citizens, and in the case of payment of fee sum pursuant to four of this part for provision of preliminary conclusions on these matters - in amount of 70 tax-exempt minimums of incomes of citizens;

for applications for provision of conclusions pursuant to Articles 14 and 29 of this Law - in amount of 80 tax-exempt minimums of incomes of citizens;

for issuance of additional exemplars of certified copies of decisions on matters, provided by this part - in amount of 0,5 tax-exempt minimum of incomes of citizens for each exemplar.

3. A fee shall be paid to the special fund of the State Budget of Ukraine as own receipts of the Antimonopoly Committee of Ukraine and shall be used for needs of the Antimonopoly Committee of Ukraine and its territorial branches, if not otherwise expressly provided by the law.

4. Non-submission to the Antimonopoly Committee of Ukraine, its territorial branches of a document confirming the payment of fee, shall become grounds to leave an application without progress for a term, specified by the body of the Antimonopoly Committee of Ukraine, head of its territorial branch. In the event of non-payment of fee sum within the term, fixed by the body of the Antimonopoly Committee of Ukraine, by the head of its territorial branch, an application shall be left without consideration, while not depriving the applicant of right to repeatedly apply to this body.

5. Submission of second application, in which the circumstances characterizing concerted actions, concentration, have not significantly changed, shall require no additional payment.

Section VII

TRIAL OF CASES ON VIOLATIONS OF LEGISLATION ON PROTECTION OF ECONOMIC COMPETITION

Article 35. Trial of Cases on Violation of the Legislation on the

Protection of Economic Competition

1. Trial of the cases on violations of the legislation on the protection of economic competition shall be started by taking the direction on commencement of trial of the case and finished by taking the cases decision.

2. Under trial of the case on violation of the legislation on the protection of economic competition the bodies of the Antimonopoly Committee of Ukraine shall:

gather and analyze documents, experts' conclusions, other information constituting a case evidence, and take case decision within its authorities;

obtain explanations of persons involving in the case, or of any persons upon their request or on own initiative.

Article 36. Grounds for Commencement of Case Trial

1. Bodies of the Antimonopoly Committee of Ukraine shall commence the trial of the case on violation of the legislation on the protection of economic competition, based on:

applications of the undertakings, citizens, associations, institutions, organizations for violations of their right due to acts or omission, determined by this Law as violations of the legislation on the protection of economic competition;

presentations of bodies of power, bodies of local self-government, bodies of administrative management and control concerning violations of the legislation on the protection of economic competition;

own initiative of the Antimonopoly Committee of Ukraine.

In the event of receipt from the applicant of petition for possibility of occurrence of negative consequences, related to submission of application, and for the purpose of protection of its interests, the trial of the case on violation of the legislation on the protection of economic competition shall be commenced in own initiative of bodies of the Antimonopoly Committee of Ukraine.

2. In the events, when acts or omission, containing signs of violation of the legislation on the protection of economic competition, shall have no tangible effect on conditions of market competition, the applicant may be rejected in respect of considering the case. (Part two of Article 36 as amended by adding pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

Article 37. Commencement of Case Trial

1. In the event of detecting violation of the legislation on the protection of economic competition, including of consequences of such violation, the bodies of the Antimonopoly Committee of Ukraine shall take the direction on commencement of trial of the case. (Part one of Article 37 as amended by adding pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

2. A direction on commencement of trial of the case shall be sent to the defendant within three working days from the day of its taking. In a case, when the defendant was defined after commencement of trial of the case, the direction on attracting as defendant in the case along with the direction on commencement of trial of the case shall be sent to it within three working days. (Part two of Article 37 as amended by adding pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

3. A notice on commencement of trial of the case shall be sent to the applicant and third persons.

Article 38. Consolidation and Severance of Cases, Suspension of Trial of Case and its Resumption

1. Bodies of the Antimonopoly Committee of Ukraine may take direction on merger of several cases or on severance of a case for individual trial.

2. Trial of the case may be suspended on own initiative of the relevant body of the Antimonopoly Committee of Ukraine or upon application of a person, participating in the case, until completion of trial by the body of the Antimonopoly Committee of Ukraine, by economic court of other case, related thereto, or until settlement the state body of other matter, related thereto. On suspension of trial of the case and its resumption the direction shall be taken.

Article 39. Persons Participating in the Case

1. As persons participating in the case shall be recognized: parties, third persons, their representatives.

2. Suitors shall be defendant and an applicant (if a case was commenced on the basis of relevant application).

An applicant shall be a person, who filed an application, representation on violation of the legislation on the protection of economic competition.

A defendant shall be a person, in respect of which the trial of the case on violation of the legislation on the protection of economic competition is performed.

A third person shall be a person, attracted to the case in connection therewith, that the decision may considerably affect its rights and interests, protected by this Law. On recognition as a third person the bodies of the Antimonopoly Committee of Ukraine shall take the direction whereon the persons, taking part in the case, shall be notified.

3. Upon determination, that as a defendant the other person must be attracted to take part in the case, the bodies of the Antimonopoly Committee of Ukraine shall take the direction on replacement of the defendant or on attracting for participation in the case of co-defendants, whereon the persons, taking part in the case, shall be notified.

Article 40. Rights and Obligations of Persons Taking Part in the Case

1. Persons, who take (took) part in a case, shall have the right to:

familiarize with case materials (except for information with restricted access, as well as for information, disclosure of which may cause damage to interests of other persons, who take (took) part in the case, or bar further trial of the case);

bring evidences, submit petitions, oral and written explanations (objections), proposals concerning matters being for expertise; {Paragraph three of part one of Article 40 as amended by adding pursuant to Law No. 3486-IV (3486-15) of 23.02.2006}

obtain copies of case decisions (abstracts thereof, except for information with restricted access, as well as for information, disclosure of which may affect interest of other persons, who took part in the case);

appeal against decisions in a procedure, defined by the law.

2. Persons taking part in the case shall in good faith use their vested rights.

Article 41. Provision of Evidences

1. As evidences in the case any actual data, enabling determining availability or absence of violation, may be.

These data shall be defined by the following methods: by explanations of parties and third persons, by explanations of officials and citizens, by written evidences, material evidences and experts' conclusions.

Oral explanations of the parties, third persons, functionaries or officials, containing data, showing the availability or absence of violation, shall be fixed in the report.

2. A collection of evidences shall be carried out by the Antimonopoly Committee of Ukraine, its territorial branches irrespectively of location of evidences.

3. Persons, taking part in the case, my bring evidences prove their credibility (objectiveness).

Article 42. Statute of Limitations for Bringing to Responsibility for Violation of Legislation on Protection of Economic Competition

1. An undertaking may not be brought to responsibility for violation of the legislation on economic competition protection , if the statute of limitations for bringing to responsibility has expired.

A statute of limitations for for bringing to responsibility for violation of the legislation on the protection of economic competition shall constitute five years from the day of committing a violation, and in the case of continuing violation - [five years] from the day of completion of committing a violation.

A statute of limitations for bringing to responsibility for violation of the legislation on the protection of economic competition, provided by items 13-16 of Article 50 of this Law, shall constitute three years from the day of committing a violation, and in the case of continuing violation - [three years] from the day of completion of committing a violation.

2. Running of the statute of limitations shall be suspended for the term of trial by the bodies of the Antimonopoly Committee of Ukraine of the case on violation of the legislation on the protection of economic competition.

Article 43. Provision of Performance of Expertise

1. Bodies of the Antimonopoly Committee of Ukraine, on own initiative or upon request of a person, talking part in the case, shall have the right to appoint the expertise, whereon the direction shall be taken.

2. Appointing an expertise and determining the circle of question, which should be set before the expertise, the appropriate body of the Antimonopoly Committee of Ukraine shall be bound to allow for proposals of parties and other persons, participating in the case. Rejecting questions, proposed by persons, participating in the case, shall be motivated by the Antimonopoly Committee of Ukraine. The direction on ordering expertise shall state

questions requiring experts' conclusions, and a person to conduct expertise. {Part two of Article 43 in edition of Law No. 3486-IV (3486-15) of 23.02.2006}

3. The expertise shall be conducted by experts of relevant institutions or by other specialists. As expert any person, who has required knowledge to give a conclusion, may be appointed.

4. A body of the Antimonopoly Committee of Ukraine, if required for giving the conclusion, may provide an expert with materials for familiarization. Herewith the experts shall not have the right to disclose information with restricted access, as well as information, disclosure of which may cause damage to interest of other persons, who take (took) part in the case, or bar further trial of the case, containing in the case materials.

5. An expert may claim a petition for submission of material, required for giving a conclusion, and indicate in the conclusion the circumstances, being of importance for the case, but in respect of which he (she) has not been asked for. An expert may waive giving a conclusion, if materials, given to him (her) are not sufficient, or his (her) knowledge is not sufficient to perform an obligation put on him (her). {Part five of Article 43 in edition of Law No. 3486-IV (3486-15) of 23.02.2006}

6. In the event of necessity of conducting additional studies, as well as in the event of inconsistency of conclusions of several experts, the body of the Antimonopoly Committee of Ukraine may order an additional expertise or re-expertise.

7. An expert, for disclosing information with restricted access or other information, disclosure of which is banned, giving untrue conclusion for rejecting without good reason to perform obligation put on him (her), shall be criminally liable pursuant to law.

8. Expenses required for conduction expertise shall be indemnified for the account of a person, who committed a violation of the legislation on the protection of economic competition. I the case of refusal to indemnify sad expenses the person who incurred these expenses may apply to an economic court for indemnification thereof.

Article 44. Seizure of Evidences, Arrestment

1. Seizure of written and material evidences, particularly, documents, Articles or other information carriers, that my constitute evidences in the case on violation of the legislation on the protection of economic competition, shall be performed on the basis of direction of the authorized person of the Antimonopoly Committee of Ukraine or head of the territorial branch personally or by authorized by him (her) employees of the Antimonopoly Committee of Ukraine, its territorial branches in the events, if:

evidences have not been presented and sufficient grounds are available to consider that documents, Articles or other carriers of information, which may be evidences or source of evidences in the case, are located at a certain place;

a threat is available that relevant documents, Articles or other information carriers may be destroyed.

2. In case of seizing original written evidences the Antimonopoly Committee of Ukraine or its territorial branches, upon request of a person, from which relevant evidences were seized, within three days of introducing a petition, shall provide this person with certified copies of these evidences. The copies of written evidences, certified by the Antimonopoly Committee of

Ukraine or its territorial branches, shall have force of original under presentation thereof to other persons.

3. If seizure of written evidences would be complicated, for instance, due to their number or due to that only a part of them is of importance for the case, the authorized employees of the Antimonopoly Committee of Ukraine or its territorial branches may obtain abstracts thereof, certified in a prescribed order by a person, to which these documents belong.

Upon request of persons, from which the originals of written documents were seized, these evidences may be returned upon the expiry of term of appealing against relevant decision on the body of the Antimonopoly Committee of Ukraine to the economic court. In the material of relevant case a copy of written evidence shall remain, certified in a prescribed order by a person, to which the original is returned.

In individual cases the material evidences, after inspection and study thereof by the relevant body of the Antimonopoly Committee of Ukraine, may be returned upon the request of persons, from which they were obtained, before the conclusion of case trial, if satisfaction of such request will not damage the trial of the case.

4. In the event, when seizure of evidences is not possible, a state authorized person, the head of the territorial branch of the Antimonopoly Committee of Ukraine or employees of the Antimonopoly Committee of Ukraine, its territorial branch, authorized by them, shall arrest Articles, documents, other information carriers, which may be evidences or source of evidences in the case.

5. Seizure or arrestment of property, Articles, documents, other information carriers shall be conducted during working hours independently of their location, including office premises and transport vehicles belonging to the undertaking, at workplaces of employees on the basis of direction of the state authorized person or the head of the territorial branch of the Antimonopoly Committee of Ukraine; at places of residence and other possessions of persons - on the basis of the decision of economic court.

On seizure or arrestment of property, Articles, documents, other information carriers the report shall be drawn up, stating the date of its drawing up, surname and title of a person who performed the seizure, list of seized or arrested Articles, documents, other information carriers or property. The report shall be signed by two authorized employees of the Antimonopoly Committee of Ukraine, its territorial branch, which conducted seizure, arrest. The report shall also be signed by persons, who were present during seizure, arrestment.

In the event of refusal of a person to sign the report, thereon a record shall be made. A person shall have the right to give explanations and comments concerning the contents of the report to be attached to the report, as well, as present motives of own refusal to sign it.

A copy of the report on seizure, arrestment shall be given to an undertaking, from which documents, Articles, other information carriers were seized, arrested or served upon a representative of the undertaking.

6. A return of seized Articles, documents, other information carriers shall be executed by drawing up a report in a procedure, set for the seizure.

On return or removal of arrestment of property, Articles, documents, other information carriers, the state authorized person of the Antimonopoly Committee of Ukraine, a head of its territorial branch shall take a direction.

7. The Antimonopoly Committee of Ukraine, its territorial branches shall ensure storing of written and material evidences.

For concealment, embezzlement, loss of Articles, documents, other information carriers the persons, to whom they are transferred for storing, shall bear responsibility provided by the law.

Article 45. Promotion to Trial of Case on Violation of Legislation on Protection of Economic Competition

To provide performance of trial of the case on violation of the legislation on the protection of economic competition, particularly, performance of acts provided by Article 44 of this Law, bodies of internal affairs, customs bodies and other law enforcement bodies shall be obliged to assist, within limits of rights, vested to them, the Antimonopoly Committee of Ukraine, its territorial branches.

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

1. Bodies of the Antimonopoly Committee of Ukraine shall have the right to give recommendations to bodies of power, bodies of local self-government, bodies of administrative management and control, undertakings, associations concerning stoppage of actions, containing signs of violations of the legislation on the protection of economic competition, elimination of reasons of arising of these violations and conditions, promoting them, and in a case, if the violation was stopped - [recommendations] concerning taking measures towards eliminating consequences of these violations. The recommendations shall be presented in a form of letter.

2. Recommendations of bodies of the Antimonopoly Committee of Ukraine shall be obligatorily considered by the bodies or persons, which were provided therewith. On the results of trial thereof the Antimonopoly Committee of Ukraine, its territorial branch shall be notified within ten days from the day of receipt of recommendation, if bodies of the Antimonopoly Committee of Ukraine have not extended this term.

3. Upon condition of performance of provisions of recommendation in the case, if the violation has not led to significant restriction or distortion of competition, has not caused considerable losses to individual persons or public, and appropriate measures have been taken to eliminate consequences of violation, the proceeding in the case on violation of the legislation on the protection of economic competition shall not be commenced, and the proceeding, commenced, shall be closed.

Article 47. Preliminary Decision in the Case

1. In the progress of trial of the case the bodies of the Antimonopoly Committee of Ukraine, upon an application, filed by the undertaking, for taking measures towards averting of negative and irreparable consequences for undertakings due to violation of the legislation on the protection of economic competition, may take the preliminary decision on:

obligatory performance of certain actions, if the urgent performance of these actions is required, based on the lawful rights and interests of other persons.

2. The preliminary decision may be appealed against in a procedure determined by Article 60 of this Law within fifteen days from the day of its receipt. This term may not be renewed.

3. In the event of closure of trial of the case in connection with failure to prove the performance of violation the defendant may apply to the economic court for indemnification to it by the undertaking, which filed an application pursuant part one of this Article, of losses, inflicted in connection with taking the preliminary decision.

4. The preliminary decision, if a shorter term is not stated therein, shall lose force on the day of receipt by the defendant of decision, taken based on the results of trial of the case.

Article 48. Decision in the Cases on Violation of Legislation on Economic Competition Protection

1. Based on the results of trial of the case on violation of the legislation on the protection of economic competition, the bodies of the Antimonopoly Committee of Ukraine shall take a decision, including on:

recognition of performance of violation of the legislation on the protection of economic competition;

stoppage of violation of the legislation on the protection of economic competition;

obligation for the body of power, body of local self-government, body of administrative management and control to cancel or change the decision, taken by it, or breach agreements, recognized as anticompetitive acts of bodies of power, bodies of local self-government, bodies of administrative management and control;

recognition of an undertaking as holding the monopoly (dominant) position on the market;

compulsory division of the undertaking holding the monopoly (dominant) position on the market;

forfeit;

blocking securities;

elimination of consequences of violations of legislation on the protection of economic competition;

cancellation of permission for concerted actions in the event of performance actions banned pursuant to Article 19 of this Law;

publishing by the defendant for own funds the official information of the Antimonopoly Committee of Ukraine or its territorial branch concerning decision, taken in the case on violation, including publishing decisions in full (except for information with restricted access, as well as for information, defined by the relevant authorized person, a head of the territorial branch, disclosure of which may cause damage to interests of other persons, who took part in trial of the case), within term and by the way, determined by this decision or legislation;

closure of case proceeding.

2. Bodies of the Antimonopoly Committee of Ukraine, which took the decision, may not cancel or change it, except for cases, provided by Article 58 of this Law. They may rectify clerical or obvious arithmetic errors made in the decision, explain their decision, not changing herewith the contents thereof, as well as take an additional decision, if the decision has not been taken on a matter investigated under trial of the case.

3. For the purpose of protection of public interests or preventing negative or averting irreparable consequences for the undertakings the bodies of the Antimonopoly Committee of Ukraine shall take the decision on recognition of a decision, taken pursuant to part one of this Article, part one of Article 30 of the Law of Ukraine "On the Protection against Unfair Competition" (236/96-BP) as such the effect of which shall not be stopped due to:

commencement by the economic court of proceedings in the case on invalidation thereof;

review of relevant decision (ruling) of the economic court. (Paragraph of part three of Article 48 in edition of Law No. 762-IV (762-15) of 15.05.2003)

The decision of the body of the Antimonopoly Committee of Ukraine, provided by this part, may be taking upon application of persons, participating in the case, or on the own initiative of the bodies of the Antimonopoly Committee of Ukraine. Such decision may be taken both before a submission of appropriate application to an economic court and upon the submission of such application, if the effect of the appealed decision of the body of the Antimonopoly Committee of Ukraine, appealed, has not been stopped by the economic court.

Article 49. Grounds for Closure of Trial of the Case on Violation of

Legislation on Economic Competition Protection

Trial of the case on violation of the legislation on the protection of economic competition shall be closed without taking the decision on merits, if:

the case shall not be considered by the Antimonopoly Committee of Ukraine, its territorial branch;

a defendant or its location have not been determined;

a defendant - a legal person was liquidated;

a case for the same reasons concerning the same defendant has already been considered or under consideration by the bodies of the Antimonopoly Committee of Ukraine;

performance of violation has not been proven;

other grounds provided by the law, are available.

Section VIII

LIABILITY FOR VIOLATION OF LEGISLATION ON ECONOMIC COMPETITION PROTECTION

Article 50. Violation of Legislation on Protection of Economic Competition

As violations of the legislation on the protection of economic competition shall be:

1) anticompetitive concerted actions;

2) abuse of monopoly (dominant) position;

- 3) anticompetitive acts of bodies of power, bodies of local self-government, bodies of administrative and economic management and control;
- 4) non-performance of decision, previous decision of bodies of the Antimonopoly Committee of Ukraine or their incomplete performance;
- 5) performance by participants of concerted actions - performance by undertakings of actions banned pursuant to part five of Article 10 of this Law;
- 6) delegating authorities of bodies of power or bodies of local self-government in cases, prohibited pursuant to Article 16 of this Law;
- 7) performance of acts banned pursuant to Article 17 of this Law;
- 8) restricting or discriminating activity prohibited pursuant to part two of Article 18, Articles 19 and 20 of this Law;
- 9) restricting activity prohibited pursuant to part one of Article 18 of this Law;
- 10) non-compliance with conditions provided by item 2 of part three of Article 22 of this Law;
- 11) violation of provisions of documents, coordinated with bodies of the Antimonopoly Committee of Ukraine, of the undertaking established as a result of concentration, if this results in the restriction of competition;
- 12) concentration without obtaining of appropriate permission of bodies of the Antimonopoly Committee of Ukraine, in the case, if availability of such a permission is required;
- 13) non-submission of information to the Antimonopoly Committee of Ukraine, its territorial branches within terms, specified by the bodies of the Antimonopoly Committee of Ukraine, by the head of its territorial branch or by regulatory legal acts;
- 14) submission of incomplete information to the Antimonopoly Committee of Ukraine, its territorial branch within terms, specified by the bodies of the Antimonopoly Committee of Ukraine, by the head of its territorial branch or by regulatory legal acts;
- 15) submission of unreliable information to the Antimonopoly Committee of Ukraine, its territorial branch;
- 16) creation of bars for employees of the Antimonopoly Committee of Ukraine, its territorial branch to carry out the inspections, examination, seizure or arrest of property, documents, Articles or other information carriers;
- 17) provision of recommendations to undertakings, associations, bodies of power, bodies of local self-government, bodies of administrative and economical management and control inciting to performance of violations of the legislation on the protection of economic competition or promoting performance of such violations;
- 18) restriction of undertaking's economic activity as response to its applying to the Antimonopoly Committee of Ukraine, its territorial branch for violation of the legislation on the protection of economic competition;
- 19) non-performance by the participants of concerted actions, concentration of requirements and obligations stipulating the decision on granting permission for concerted actions, concentration;

20) restriction of activity of associations, banned pursuant to Article 21 of this Law.

Article 51. Types of Responsibility

The violation of the legislation on the protection of economic competition shall entail the responsibility, specified by law.

Article 52. Penalties

1. Bodies of the Antimonopoly Committee of Ukraine shall inflict penalties on associations, undertakings:

legal persons;

natural persons;

a group of undertakings - legal and/or natural persons, recognized, pursuant to Article 1 of this Law as an undertaking in the events, provided by part four of this Article.

2. For violations provided by:

items 1, 2 and 4 of Article 50 of this Law, penalties shall be inflicted in amount of to ten percent of income (revenue) of an undertaking obtained from sales of products (goods, works, services) for the latest accounting year, preceding the year in which a penalty is inflicted. In the event of availability of illegally obtained profit, exceeding ten percent of said income (revenue), a penalty shall be inflicted in amount, not exceeding the triple amount of illegally obtained profit. An amount of illegally obtained profit may be calculated by estimating;

items 5, 8, 10, 11, 12 and 19 of Article 50 of this Law, penalties shall be inflicted in amount of to five percent of income (revenue) of an undertaking obtained from the sales of products (goods, works, services) for the latest accounting year, preceding the year in which a penalty is inflicted;

items 9, 13-16 and 18 of Article 50 of this Law, penalties shall be inflicted in amount of to one percent of income (revenue) of an undertaking obtained from the sales of products (goods, works, services) for the latest accounting year, preceding the year, in which a penalty is inflicted.

3. An income (revenue) of an undertaking obtained from the sales of products (goods, works, services) shall be determined as total income (revenue) value of sales of products (goods, works, services) of all legal and natural persons entering the group, being recognized as an undertaking pursuant to Article 1 of this Law.

4. In a case, when several legal and/or natural persons - undertakings, entering the group, being recognized as an undertaking, performed an act (actions, omission), which led to violation of the legislation on the protection of economic competition by the said undertaking, and/or have the rights, without which any violation would not be possible to perform, and/or have obtained or may obtain competition's advantages or other benefits, the penalty shall be inflicted on the undertaking, represented by legal and/or natural persons, which performed the said acts (actions, omission) or obtained or may obtain said benefits. As a benefit, particularly, an opportunity to effect activity of other legal and/or natural persons - undertakings, obtaining part of their profit shall be considered.

5. If the income (revenue) is absent, or a defendant, upon the request of bodies of the Antimonopoly Committee of Ukraine, of the head of its territorial branch has not informed on the amount of income (revenue), a penalty, provided by paragraph two of part two of this Article, shall be inflicted in amount of to twenty thousand of tax-exempt minimums of incomes of citizens; a penalty, provided by paragraph three of part two of this Article - in amount of to ten thousand tax-exempt minimums of incomes of citizens; a penalty, provided by paragraph four of part two of this Article - in amount of two thousand of tax-exempt minimums of incomes of citizens.

If required, the mount of income (revenue) may be determined by the bodies of the Antimonopoly Committee of Ukraine on the basis of administrative information, obtained from various sources. (Part five of Article 52 added by paragraph pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

6. Decisions on infliction of penalties in amounts above one thousand of tax-exempt minimums of incomes of citizens shall be taken exclusively by the Antimonopoly Committee of Ukraine, by the administrative board of the Antimonopoly Committee of Ukraine at their meetings.

7. In the event, if an undertaking operated less than one year, the amount of penalty shall be calculated based on income (revenue) of the undertaking obtained within full time before making the decision on infliction of penalty.

Article 53. Compulsory Division

1. If the undertaking abuses the monopoly (dominant) position on the market, the bodies of the Antimonopoly Committee of Ukraine may take the decision on compulsory division of the undertaking holding the monopoly (dominant) position.

2. The compulsory division shall not be applied in the event of:

absence of opportunity for organizational or territorial separation of enterprises, structural departments or structural units;

availability of close technological link of enterprises, structural departments or structural units (if a volume of products, used by the undertaking, exceeds thirty percent of gross volume of enterprise, structural department or structural unit).

3. Decision of the Antimonopoly Committee of Ukraine on compulsory division of the undertaking shall be executed within the set term, which may not be shorter than six months.

4. Reorganization of an undertaking to be compulsorily divided shall be performed at its discretion subject to elimination of monopoly (dominant) position of this undertaking on the market.

Article 54. Administrative Responsibility of Officials and Other Employees of Undertakings, Authorities, Bodies of Local Self-Government, Bodies of Administrative and Economical Management and Control

(Part one of Article 54 excluded on the basis of Law No. 2596-IV (2596-15) of 31.05.2005)

2. For offences against the law, provided by items 4, 13-16 of Article 50 of this Law, the officials of the authorities, bodies of local self-government,

bodies of administrative and economical management and control shall bear administrative responsibility pursuant to law.

3. For the offence against the law, provided by item 16 of Article 50 of this Law, the employees of undertakings, associations shall bear administrative responsibility pursuant to law. (Article 54 added by part three pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

Article 55. Indemnification of Damage

1. Persons, to whom the damage was inflicted due to violation of the legislation on the protection of economic competition, may apply to the economic court for their indemnification.

2. Damage, inflicted due to violation of the legislation on the protection of economic competition, provided by items 1, 2, 5, 10, 12, 18, 19 of Article 50 of this Law, shall be indemnified by the person, who committed the violation, in amount of double damage caused.

Section IX

PROCEDURE OF EXECUTION, EXAMINATION, REVIEW OF, APPEALING AGAINST DECISIONS, DIRECTIONS, CALCULATION OF TERMS AND INFORMATION EXCHANGE

Article 56. Procedure of Execution of Decisions and Directions of Bodies of the Antimonopoly Committee of Ukraine, Heads of Territorial Branches of the Antimonopoly Committee of Ukraine

1. Decisions (abstracts thereof with exception of information with restricted access, as well as of information, determined by the relevant state authorized person of the Antimonopoly Committee of Ukraine, by the head of the territorial branch of the Antimonopoly Committee of Ukraine, disclosure of which may cause damage to interests of other persons, who took part in the case), directions of the bodies of the Antimonopoly Committee of Ukraine, of heads of its territorial branches shall be given for execution by sending or serving against acknowledgement or by otherwise notifying.

In the event, if it fails to serve the decision, direction, particularly, due: (Paragraph two of part one of Article 56 as amended by the Law No. 2596-IV (2596-15) of 31.05.2005)

absence of natural person at last known place of residence (place of registration) (Indent 2 of Article 56 (1) as amended by the Law No.1276-VI (1276-17) of 16.04.2009);

absence of officials of authorized representatives of the undertaking, of a body of administrative and economical management and control at relevant official address

- a decision, direction of the bodies of the Antimonopoly Committee of Ukraine shall be deemed as served to the defendant, in ten days from the day of publishing information on the decision, direction taken in the official print organ (the newspaper of the Verkhovna Rada of Ukraine "Golos Ukrayiny", the newspaper of the Cabinet of Ministers of Ukraine "Uryadovy Kur'er", "Ofitsiyny visnyk Ukrayiny", print editions of the relevant regional Council at the last known place of residence or residence registration, official

address of defendant). (Indent five of Article 56 (1) as amended by the Law No. 2596-IV (2596-15) of 31.05.2005 and by the Law No. 1276-VI of 16.04.2009)

2. Decisions and directions of the bodies of the Antimonopoly Committee of Ukraine, heads of its territorial branches shall be binding.

3. A person, on whom the penalty was inflicted according to the decision of the body of the Antimonopoly Committee of Ukraine, shall pay this within two months from the day of receipt of decision on inflicting penalty. (Part three of Article 56 as amended by adding pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

4. If a penalty was inflicted pursuant to part four of Article 53, the payment of penalty may be carried out both fully and partly by any legal or natural person, entering the undertaking and being an object in penalty infliction. Payment of penalty in full by one legal or natural person or by several persons shall free other persons, for which this penalty was paid, from the payment of penalty.

5. For each day of delay in payment of penalty a fine shall be paid in amount of one and half percent of amount of penalty. The amount of fine may not exceed the amount of penalty, inflicted according to appropriate decision of the body of the Antimonopoly Committee of Ukraine.

Fine charging shall be stopped from the day of making by the economic court decision on infliction of relevant penalty.

Fine charging shall be stopped under trial or review by the economic court: (Paragraph three of part five of Article 56 in edition of Law No. 762-IV (762-15) of 15.05.2003)

of the case on invalidation of decision of the body of the Antimonopoly Committee of Ukraine on infliction of penalty;

of relevant decision (ruling) of the economic court. (Paragraph five of part five of Article 56 as amended by adding pursuant to Law No. 762-IV (762-15) of 15.05.2003)

(Paragraph six of part five of Article 56 excluded on the basis of Law No. 762-IV (762-15) of 15.05.2003)

Fine charging shall be stopped under trial by the body of the Antimonopoly Committee of Ukraine of application of a person, on which the penalty was inflicted, for examination or review of the decision in the case on violation of the legislation on the protection of economic competition. (Part five of Article 56 added by paragraph pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

6. Upon the application of a person, on which the penalty was inflicted, bodies of the Antimonopoly Committee of Ukraine by their decision shall have the right to postpone or pay in installments the penalty inflicted by them.

7. In the event of non-payment of penalty and fine within the terms, provided by the decision, the bodies of the Antimonopoly Committee of Ukraine shall levy penalty and fine in a judicial proceeding.

8. Within five days from the day of payment of penalty the undertaking shall be bound to send to the Antimonopoly Committee of Ukraine or its territorial branch, correspondently, documents confirming the payment of penalty. (Article 56 added by the part pursuant to Law No. 2596-IV (2596-15) of 31.05.2005)

9. Sums of penalties and fines levied shall be credited to the state budget. (Operation of the item of Article 56 suspended for 2003 pursuant to Law No.

380-IV (380-15) of 26.12.2002; operation of the part of Article 56 suspended for 2004 pursuant to Law No. 1344-IV (1344-15) of 27.11.2003; operation of the part of Article 56 suspended for 2005 pursuant to Law No. 2285-IV (2285-15) of 23.12.2004; in edition of Law No. 2505-IV (2505-15) of 25.03.2005)

10. Decisions of relevant bodies and officials of the antimonopoly Committee of Ukraine on imposition of administrative punishments in respect of officials and other employees of the undertakings, bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall be executed in a procedure, provided by law.

Article 57. Examination of Decisions in Cases on Violation of Legislation on Economic Competition Protection and in Applications, Cases on Concerted Actions

1. Decisions taken by the administrative board of the territorial branch of the Antimonopoly Committee of Ukraine, by the state authorized person of the Antimonopoly Committee of Ukraine, by the administrative board of the Antimonopoly Committee of Ukraine in the cases on violations of the legislation on the protection of economic competition, in applications, cases on concerted actions, may be examined upon applications of persons, who took part in the case, or on own initiative in an order, determined by the Antimonopoly Committee of Ukraine.

2. An application for examination of the decision may be submitted to the Antimonopoly Committee of Ukraine within two months from the day of receipt of the decision. This term may not be renewed.

3. The decisions of the administrative board of the territorial branch of the Antimonopoly Committee of Ukraine shall be examined by the administrative board of the Antimonopoly Committee of Ukraine, the decisions of the state authorized person of the Antimonopoly Committee of Ukraine, of the administrative board of the Antimonopoly Committee of Ukraine shall be examined by the Antimonopoly Committee of Ukraine.

4. Bodies of the Antimonopoly Committee of Ukraine performing the examination of the decision, may suspend the execution of the decision until the completion of its examination, whereon they shall notify in writing the persons, who take part in the case.

5. Based on the results of examination of the decision the bodies of the Antimonopoly Committee of Ukraine shall have the right to:

uphold the decision;

change the decision;

change the decision in part, and send the case for new trial in this part;

reverse the decision and make a new decision, send the case for new trial or suspend the proceedings in the case.

Article 58. Review of Decisions in Cases on Violations of Legislation on Protection of Economic Competition and in Applications for Concerted Actions, Concentration

1. Bodies of the Antimonopoly Committee of Ukraine, on own initiative or upon applications of persons may review decisions, taken by them in the cases on violations of the legislation on the protection of economic competition and in the applications for, cases on actions, concentration in the event:

if important conditions have not been and could not have been known to the bodies of the Antimonopoly Committee of Ukraine, that has led to making an unlawful or unreasonable decision;

if the decision was taken on the basis of unreliable information, that has led to making an unlawful or unreasonable decision;

non-performance by participants of concerted actions, concentration of requirements and obligations, stipulating the decision of the bodies of the Antimonopoly Committee of Ukraine concerning concerted actions, concentration pursuant to part two of Article 31 of this Law;

if circumstances, on the basis of which the decision was taken on granting permission for concerted actions, concentration of undertakings, do not exist anymore;

of availability of other reasons, provided by the laws of Ukraine.

bodies of the Antimonopoly Committee of Ukraine, which made the decision, may suspend the execution of the decision until review thereof, whereon they shall in writing inform persons, taking part in the case.

2. Review of decisions in the cases on violation of the legislation on the protection of economic competition, in applications for, cases on concerted actions shall be permitted in the events, provided by:

paragraphs two and three of part one of this Article - within five years from the day of making relevant decision;

paragraphs four and five of part one of this Article - within the period of validity of the decision;

paragraph six of part one of this Article - within three years from the day of making the decision, if otherwise not determined by the law.

3. Based on the results of reviewing, the bodies of the Antimonopoly Committee of Ukraine may:

leave the decision unchanged;

change the decision;

disaffirm the decision;

make a new decision, provided by Articles 31 and 48 of this Law, by part one of Article 30 of the Law of Ukraine "On the Protection against Unfair Competition" (236/96-BP).

4. In the event, if based on the results of reviewing the decisions the Antimonopoly Committee of Ukraine shall take the decision on prohibition of concentration, the state registration of an undertaking, established due to concentration, shall be cancelled in a judicial proceeding on the basis of claim of the Antimonopoly Committee of Ukraine.

Article 59. Reasons for Change, Cancellation or Invalidation of Decisions of the Antimonopoly Committee of Ukraine

1. Reasons for changing, canceling or invalidating decisions of the Antimonopoly Committee of Ukraine shall be:

incomplete clarification of circumstances being of importance for the case;

failure to prove circumstances being of importance for the case and being recognized as established;

non-compliance of conclusions, stated in the decision, with circumstances of the case;

violation or improper application of rules of substantive or procedural law.

2. Violation or improper application of rules of substantive or procedural law may be reason for change, cancellation or invalidation of the decision only provided, that this violation has led to taking a wrong decision.

Article 60. Appealing against Decisions of the Antimonopoly Committee of Ukraine

1. An applicant, a defendant, a third person may appeal against the decision of the Antimonopoly Committee of Ukraine fully or partially to the economic court within two months from the day of receipt of the decision. This term may not be renewed.

2. Decisions of the Antimonopoly Committee of Ukraine, of the administrative board of the Antimonopoly Committee of Ukraine shall be appealed to the economic court of city of Kyiv. Decisions of administrative board of the Antimonopoly Committee of Ukraine shall be appealed to the economic courts of the Autonomous Republic of Crimea, of regions, cities of Kyiv and Sevastopol. (Part two of Article 60 as amended by adding pursuant to Law No. 762-IV (762-15) of 15.05.2003)

3. Receipt by the economic court for consideration of application for invalidation of the decision of the Antimonopoly Committee of Ukraine shall not stop its execution, except for the cases, provided by part four of this Article.

4. Commencement by the economic court of proceedings in the case on invalidation of the decision of the body of the Antimonopoly Committee of Ukraine, taken:

pursuant to part one of Article 48 of this Law, to part one of Article 30 of the Law of Ukraine "On the Protection against Unfair Competition" (236/96-BP);

based on the results of examination pursuant to part five of Article 57 of this Law;

based on the results of review pursuant to part three of Article 58 of this Law,

as well as review, upon the application of a party to the case, of relevant decision (ruling) of the economic court shall suspend the execution of the said decision of the Antimonopoly Committee of Ukraine for the term of trial of this case or of review of relevant decision (ruling) of the economic court, if not otherwise determined by a body of the Antimonopoly Committee of Ukraine pursuant to part three of Article 48 of this Law or by the economic court. (Paragraph five of part four of Article 60 in edition of Law No. 762-IV (762-15) of 15.05.2003)

5. Notwithstanding the provisions of part four of this Article, when sufficient reasons are available, the economic court may stop the decision of the Antimonopoly Committee of Ukraine.

Article 61. Notice on Legal Cases

1. The economic court, upon request of the Antimonopoly Committee of Ukraine shall inform the Antimonopoly Committee of Ukraine on legal cases to be solved on the basis of the legislation on the protection of economic competition.

2. The state authorized person of the Antimonopoly Committee of Ukraine, the head of the territorial branch of the Antimonopoly Committee of Ukraine or employees of the Antimonopoly Committee of Ukraine, its territorial branches, authorized by them, shall have the right to familiarize with materials of these cases and obtain copies of documents.

The Antimonopoly Committee of Ukraine and its territorial branches shall have the right to enter the case as third persons not claiming independent demands in respect of matter in dispute, if the decision may make effect on their rights and obligations under performance of state control over protection of economic competition

Article 62. Determination and Calculation of Terms within Legislation

on the Protection of Economic Competition

1. Terms, within whose limits relevant acts are performed, particularly, under consideration of applications for granting permission for concerted actions, concentration of undertakings and under trial of the cases on violation of the legislation on the protection of economic competition shall be specified by the legislation on the protection of economic competition, as well as by bodies of the Antimonopoly Committee of Ukraine, by the head of the territorial branch of the Antimonopoly Committee of Ukraine. Stated terms shall be defined as a calendar date, by the statement of an event to inevitably occur or as a time period.

2. Running of term to be calculated by years, months or days shall commence from the day following the calendar date or occurrence of an event determining its commencement.

A term to be calculated by years shall be finished in relevant month and at date of final year of the term.

A term to be calculated by months shall be finished at relevant date of final month of the term. If the end of the term to be calculated by months falls on such a month, having no relevant date, the term shall finish on the last day of this month.

In the event, when the last day falls on a non-working day, as the day of finishing of the term the first working day shall be considered following this.

The last day of the term lasts till 12 p.m., but when within this term the act shall be performed in the Antimonopoly Committee of Ukraine or its territorial branch, the term shall be finished at the moment of the end of the working day.

3. The term shall not be deemed as defaulted, if before its expiry the required documents were registered at the post office.

Article 63. Information Exchange

1. undertakings, linked by relation of control pursuant to Article 1 of this Law, shall be bound to provide the information exchange between themselves, including this concerning cases, provided by part two of Article 22 of this Law and take other measures in a way and volume, which would ensure prevention of committing violations of the legislation on the protection of economic competition.

2. Non-performance by undertakings of requirements of part one of this Article shall not free from responsibility other undertakings, to which the information shall be submitted or which shall have been bound to take other measures.

Section X

FINAL PROVISIONS

1. This Law shall come into force in one year upon publication thereof, except for items 2 and 3, coming into force on the day of publication.

2. Before entry of this Law into force the undertakings shall apply to the Antimonopoly Committee of Ukraine for granting permission for concerted actions, if these actions will occur on the day of this Law coming into force and may be permitted pursuant to Article 10 of this Law.

3. Concerted actions, in respect of which the application was filed pursuant to item 2 of this section, shall be deemed as permitted, if within one year from the day of this Law coming into force the bodies of the Antimonopoly Committee of Ukraine have not taken the decision on prohibition of these concerted actions.

4. Article 44 of this Law, in respect of entering the dwelling or other property of a person, conducting inspection or search therein, shall come into force on the day of entry into force of the law, that will provide a procedure of taking the decision by the economic court concerning entering the dwelling or other property, conducting inspection or search therein.

5. The Cabinet of Ministers of Ukraine, within three months upon bringing into effect of the Law of Ukraine "On the Protection of Economic Competition", shall:

submit to the Verkhovna Rada of Ukraine proposals concerning bringing legislative acts of Ukraine into compliance with this Law;

bring its regulatory legal acts into compliance with this Law;

provide review and cancellation by ministries and other central bodies of executive power of Ukraine of their regulatory legal acts contradicting this Law;

draw up regulatory legal acts, provided by this Law.

6. As lost their effect shall be recognized:

the Law of Ukraine "On Restriction of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activity" (2132-12) (The Official Journal of the Verkhovna Rada of Ukraine, 1992, No. 21, p. 296; 1993, No. 27, p. 291; 1995, No. 28, p. 202; 1998, No. 34, p. 229);

item 12 of the Law of Ukraine "On Introducing Amendments and Additions to Some legislative Acts of Ukraine Concerning Protection of Intellectual Property" (75/95-BP) (The Official Journal of the Verkhovna Rada of Ukraine, 1995, No. 13, p. 85);

item 3 of section I of the Law of Ukraine "On introducing Amendments to Some Laws of Ukraine Providing Undisputable Writing-off (Collection) Funds from the Accounts of Juridical Persons and Natural Persons - Subjects of

Entrepreneurial Activity with the Banks" (642/97-BP) (The Official Journal of the Verkhovna Rada of Ukraine, 1998, No. 10, p. 36).

The President of Ukraine L. KUCHMA

Kyiv, 11 January 2001

No. 2210-III