

## **LAW OF UKRAINE**

### **ON THE PROTECTION OF ECONOMIC COMPETITION**

*(As of 11 January 2001)*

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

#### **Section I. GENERAL PROVISIONS**

##### **Article 1. Terms Defined**

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

***economic competition (competition)*** denoting such a contest among economic entities with a view to gaining advantages over other economic entities thanks to their own achievements that results in the situation where consumers and economic entities have an opportunity to choose from among several sellers, buyers, whereas an individual economic entity is not able to set conditions for the turnover of products on the market;

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

***control*** denoting such a decisive impact on economic activities of an economic entity or its part that is exerted by one or more than one related legal and (or) natural persons directly or through other persons, in particular by: the right to own or use all the assets or their considerable part; the right ensuring a decisive impact on the formation, voting results, and decisions of managing bodies of the economic entity; the conclusion of such agreements and contracts that make it possible to set conditions for economic activities, to give binding instructions or to perform functions of the managing body of the economic entity; the occupation of the position of the head, a deputy head of the supervisory board, the board of directors or of other supervisory or executive board of the economic entity by such a person that occupies one or several of the mentioned positions at other economic entities; the occupation of more than half of the positions of members of the supervisory board, the board of directors, other supervisory or executive boards of the economic entity by such persons that occupy one or several of the mentioned positions at another economic entity. Legal and (or) natural persons who jointly or concertedly perform economic activities, including those which jointly or concertedly impact on economic activities of the economic entity, shall be considered as related;

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

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

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

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

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

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

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

*economic entity* denoting such a legal person irrespective of its organisation and legal form, its form of ownership or such a natural person that is engaged in the production, sale or purchase of products and in other economic activities, including a person who exercises control over another legal or natural person; a group of economic entities if one or several of them exercise control over the others. Bodies of state power, bodies of local self-government, bodies of administrative and economic management and control shall also be considered as economic entities in terms of their activities in the production, sale, and purchase of products or in terms of their other economic activities. Activities of a natural person in the purchase of consumer goods for their final consumption shall not be considered as economic activities;

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

## **Article 2. Scope of the Present Law**

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

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

## **Article 3. Laws on the Protection of Economic Competition**

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

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

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

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

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

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

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

4. Bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall facilitate the Antimonopoly Committee of Ukraine in its exercising authorities in

the sphere of the maintenance and protection of economic competition, the limitation of monopolism and in its exercising control over the observance of the laws on the protection of economic competition.

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

## ***Section II. ANTICOMPETITIVE CONCERTED ACTIONS OF ECONOMIC ENTITIES, ABUSES OF A MONOPOLY (DOMINANT) POSITION ON THE MARKET***

### ***Article 5. Concerted Actions***

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

Such establishment of an economic entity that is directed towards or results in the co-ordination of competitive behaviour between economic entities which established the economic entity or between them and the newly-established economic entity shall also be considered as concerted actions.

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

### ***Article 6. Anticompetitive Concerted Actions of Economic Entities***

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

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

1) the setting of prices or other conditions with respect to the purchase or sale of products;  
2) the restriction of production, product markets, technical and technological development, investments or the establishment of control over them;

3) the distribution of markets or sources of supply in accordance with the territorial principle, the assortment of products, the volume of their sale or purchase, in accordance with the circle of sellers, buyers or consumers or in accordance with other signs;

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

5) the removal of other economic entities, buyers, sellers from the market or the limitation of their entry into (exit from) the market;

6) the application of different conditions to equivalent agreements concluded with other economic entities, which results in the creation of a disadvantage for these economic entities in terms of competition;

7) the conclusion of agreements provided that other economic entities assume additional obligations whose content or which in terms of customs in trade and other fair customs in entrepreneurial activities have nothing in common with the subject of these agreements;

8) the substantial limitation of the competitiveness of economic entities on the market without objectively justified causes.

3. Anticompetitive concerted actions shall be prohibited and shall entail responsibility according to laws.

4. A person who had committed anticompetitive concerted actions, but earlier than the remaining participants in the actions voluntarily informed the Antimonopoly Committee of Ukraine or its territorial office on the fact and submitted information of essential importance to taking a decision on the case must be relieved from the responsibility for committing anticompetitive concerted actions which are provided for by Article 52 of the present Law.

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

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

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

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



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

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

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

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

- the use of products supplied by the participant or on the use of products of other suppliers;
- the purchase of other products from other economic entities or on the sale of other products to other economic entities or consumers;
- the purchase of such products that due to their nature or in terms of customs in trade and other fair customs in entrepreneurial activities have nothing in common with the subject of the relevant agreement;
- the setting of prices or other contractual conditions for selling a supplied product to other economic entities or consumers.

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

- result in the substantial restriction of competition on the whole market or in its significant part, including the monopolisation of the relevant markets;
- limit the entry of other economic entities into the market;
- result in the economically unjustified raise in prices or the growth in product deficit.

### **Article 9. Concerted Actions Relating to Intellectual Property Rights**

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

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

### **Article 10. Authorisable Concerted Actions**

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

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

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

3. The Cabinet of Ministers of Ukraine may authorise concerted actions which were not authorised by the Antimonopoly Committee of Ukraine according to Part 2 of the present Article if participants in the concerted actions prove that a positive effect produced by the restriction of competition on the public interests outweighs negative consequences.

4. The authorisation provided for by Part 3 of the present Article may not be given if:  
participants in concerted actions apply such restrictions that are not necessary for the implementation of the concerted actions;  
the restriction of competition constitutes a threat to the system of market economy.
5. It shall be prohibited to perform the concerted actions provided for by Part 1 of the present Article until authorisation has been granted by bodies of the Antimonopoly Committee of Ukraine in accordance with an established procedure.

#### **Article 11. Typical Requirements for Concerted Actions**

1. The Antimonopoly Committee of Ukraine may establish typical requirements for the concerted actions provided for by Articles 7, 8, 9, and 10 of the present Law.
2. Concerted actions which satisfy such typical requirements for certain types of concerted actions that are established by the Antimonopoly Committee of Ukraine shall be authorised and shall require no consent to be given by bodies of the Antimonopoly Committee of Ukraine in accordance with Part 1 of Article 10 of the present Law if this is directly stated by a decision of the Antimonopoly Committee of Ukraine on the establishment of the typical requirements.

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

1. An economic entity shall occupy a monopoly (dominant) position on the product market if:  
not a competitor is on the given market;  
the economic entity is not exposed to substantial competition as a result of the limited access of other economic entities to the markets of raw materials, to the markets of materials, and to the markets of distribution because of the existence of barriers to the entry of other economic entities into the market, because of the existence of privileges or other circumstances.
2. The position of an economic entity shall be considered as a monopoly (dominant) position if its share in the product market exceeds 35% unless the economic entity proves that it is exposed to substantial competition.
3. The position of an economic entity may also be considered as a monopoly (dominant) position if its share in the product market is equal to or is less than 35% and if the economic entity is not exposed to substantial competition, in particular as a result of comparatively small market shares of competitors.
4. It shall be considered that either of the two or each of more than two economic entities occupies a monopoly (dominant) position on the product market if there is no competition or if there is no substantial competition between them with respect to a certain product and if a condition provided for by Part 1 of the present Article is satisfied as regards the competitors taken together.
5. The position of each of several economic entities shall be considered as a monopoly (dominant) position if, with respect to them, the following conditions are met:  
the combined share of not more than three economic entities having the largest shares in the same market exceeds 50%;  
the combined share of not more than five economic entities having the largest shares in the same market exceeds 70%;  
unless they prove that the conditions provided for by Part 4 of the present Article are not satisfied.

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

1. Such actions or inactivity of an economic entity occupying a monopoly (dominant) position on the market that resulted or can result in the prevention, elimination or restriction of competition, in particular the restriction of the competitiveness of other economic entities, or in the infringement of the interests of other economic entities or consumers, which would be impossible in case of the existence of substantial competition on the market, shall be considered as abuses of a monopoly (dominant) position on the market.
2. The following actions, in particular, shall be considered as abuses of a monopoly (dominant) position on the market:
  - 1) the setting of such prices or other conditions for the purchase or sale of a product that would be impossible in case of the existence of substantial competition on the market;

- 2) the application of different prices or other different conditions to equivalent agreements with economic entities, sellers or buyers without objectively justified causes;
  - 3) the conclusion of agreements on condition that the relevant economic entity assumes additional obligations which due to their nature or in terms of customs in trade and other fair customs in entrepreneurial activities have nothing in common with the subject of the contract;
  - 4) the limitation of production, markets or technical development, which caused or can cause damage to other economic entities, buyers, sellers;
  - 5) the partial or complete refusal to purchase or sell a product if there are no alternative sources of sale or purchase;
  - 6) the substantial restriction of the competitiveness of other economic entities on the market without objectively justified causes;
  - 7) the creation of entry (exit) market barriers or the removal of sellers, buyers, other economic entities from the market.
3. An abuse of a monopoly (dominant) position on the market shall be prohibited and shall entail responsibility according to laws.

#### **Article 14. Conclusions on the Qualification of Actions**

In order to prevent violations of the laws on the protection of economic competition, to increase the predictability of its application, bodies of the Antimonopoly Committee of Ukraine, proceeding from information submitted by economic entities, may give opinions in the form of recommended interpretations on the conformity of actions of the economic entities with the provisions of Articles 6, 10, and 13 of the present Law.

### **Section III. ANTICOMPETITIVE ACTIONS OF BODIES OF POWER, BODIES OF LOCAL SELF-GOVERNMENT, BODIES OF ADMINISTRATIVE AND ECONOMIC MANAGEMENT AND CONTROL**

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

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

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

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

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

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

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

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

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

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

an action establishing such prohibitions and restrictions of the independence of enterprises that are not provided for by laws of Ukraine, including prohibitions and restrictions in terms of the purchase or sale of products, the setting of prices, the charting of programmes relating to activities and development, the use of profits.

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

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

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

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

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

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

#### **Article 18. Restrictive Activities of Economic Entities and Associations**

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

2. It shall be prohibited for economic entities and associations to compel other economic entities: to be engaged in the anticompetitive concerted actions defined by Article 6 of the present Law; to be engaged in the concerted actions defined by Articles 7, 8, 9, and 10 of the present Law; to participate in the concentration of economic entities defined by Article 22 of the present Law.

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

1. It shall be prohibited for economic entities which were granted authorisation for concerted actions in accordance with Article 10 of the present Law by the relevant bodies of the Antimonopoly Committee of Ukraine, for economic entities whose concerted actions are authorised according to Articles 7, 8, and 9 of the present Law to establish such restrictions with respect to economic activities of economic entities that, as a rule, are not applied to the relevant activities of other economic entities or to apply, without objectively justified causes, different approaches to different economic entities.

2. It shall be prohibited for economic entities which in accordance with Part 3 of Article 10 of the present Law were granted permission for concerted actions by the Cabinet of Ministers of Ukraine, irrespective

of their monopoly position, to commit such actions that in accordance with Article 13 of the present Law are considered as abuses of a monopoly (dominant) position on the market.

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

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

#### **Article 20. Discrimination Practised by Economic Entities Against Competitors**

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

#### **Article 21. Restrictive Activities of Associations**

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

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

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

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

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

### **Section V. CONTROL OVER THE CONCENTRATION OF ECONOMIC ENTITIES**

#### **Article 22. Concentration of Economic Entities**

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

2. The following shall be considered as concentration:

1) the merger of economic entities or the affiliation of an economic entity to another entity;

2) the acquisition of control directly or through other persons over one or several economic entities or over parts of economic entities by one or several economic entities, in particular by means of:

à) the direct or indirect purchase or acquisition (by other means) of assets in the form of an integrated property complex of or a structural subdivision of an economic entity; the receipt (for further management), lease (leasing), concession or acquisition (by other means) of the right to use assets in the form of an integrated property complex of or a structural subdivision of an economic entity, in particular the purchase of assets of a liquidated economic entity;

á) the appointment or election of a person — occupying one or several positions of the head, a deputy head of the supervisory board, the board of directors or the mentioned positions at other supervisory or executive boards of other economic entities — as the head, a deputy head of the supervisory board, the board of directors or of other supervisory or executive boards of the economic entity or the creation of a situation where there is the coincidence of more than half of the members of the supervisory board, the board of directors, of members of other supervisory or executive boards of two or more than two economic entities;

â) the establishment of such an economic entity by two or more than two economic entities that will independently perform economic activities for a long period, whereas the mentioned formation does not result

in the co-ordination of competition behaviour between economic entities which established the economic entity or between them and the newly-established economic entity;

3) such direct or indirect purchase, acquisition (by other means) or receipt (for management) of shares (stocks) that ensures attaining or exceeding 25 or 50% of the votes at the higher board of management of the relevant economic entity.

3. The following shall not be considered as concentration:

1) the establishment of an economic entity whose purpose or result is the co-ordination of competitive behaviour between economic entities which established the mentioned economic entity or between them and the newly-established economic entity. Actions of that sort shall be considered as concerted actions in accordance with Paragraph 2 of Part 1 of Article 5 of the present Law;

2) the purchase of shares (stocks) of an economic entity by a person whose major type of activities is the performance of financial operations or operations associated with securities if the purchase is made for the further resale of the shares (stocks) provided that the mentioned person does not participate in voting at the higher board of management or at other boards of management of the economic entity. In a case like that the further resale shall be carried out within a year from the date of the purchase of shares (stocks). Bodies of the Antimonopoly Committee of Ukraine, proceeding from an application which is to be submitted by the mentioned persons and which must substantiate the impossibility of carrying out the further resale, may take a decision on the prolongation of the period;

3) actions performed between economic entities which are linked by relations of control in the cases provided for by Part 2 of the present Article with the exception of cases where that sort of control is acquired without permission to be given by the Antimonopoly Committee of Ukraine if the necessity of getting that sort of permission is provided for by laws;

4) the acquisition of control over an economic entity or over its part, including acquisition made thanks to the right of an arbitration manager, an official or officer of a body of state power to manage or use the property of the economic entity.

### ***Article 23. Participants of the Concentration of Economic Entities***

The following shall be considered as participants in concentration:

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

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

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

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

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

### ***Article 24. Cases Requiring Authorisation for the Concentration of Economic Entities***

1. Concentration may be carried out only on condition that prior authorisation for it is granted by the Antimonopoly Committee of Ukraine or an administrative board of the Antimonopoly Committee of Ukraine:

in the cases provided for by Part 2 of Article 22 of the present Law and other legal acts if the total cost of assets or the total product sales of the participants in the concentration, with relations of control being taken into account, in the last financial year, including those abroad, exceed the sum equivalent to 12,000,000 euros defined in accordance with the exchange rate to be established by the National Bank of Ukraine and to be effective on the last day of the financial year while:

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

to 1,000,000 euros defined in accordance with the exchange rate to be established by the National Bank of Ukraine and to be effective on the last day of the financial year, and

the assets (total assets) or the sales (total sales) of products, in Ukraine only, of at least one participant in the concentration, with relations of control being taken into account, exceed the sum equivalent to 1,000,000 euros defined in accordance with the exchange rate to be established by the National Bank of Ukraine and to be effective on the last day of the financial year.

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

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

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

5. Concentration which requires authorisation in accordance with Part 1 of the present Article shall be prohibited until it has been authorised. Until the concentration has been authorised, participants in the concentration shall refrain from performing such actions that could result in the restriction of competition and in the impossibility of restoring the original state.

#### **Article 25. Grounds for Authorising the Concentration of Economic Entities**

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

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

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

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

#### **Section VI. CONSIDERATION OF APPLICATIONS AND CASES SOUNDING IN AUTHORISATION FOR CONCERTED ACTIONS OR THE CONCENTRATION OF ECONOMIC ENTITIES**

#### **Article 26. Submission of an Application for Authorising Concerted Actions and the Concentration of Economic Entities**

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

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

an application for authorising concentration — to the Antimonopoly Committee of Ukraine.

Participants of concerted actions and concentration, bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall submit a joint application. Restricted

access information which is necessary for considering the application may be submitted to the relevant bodies of the Antimonopoly Committee of Ukraine by these persons separately.

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

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

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

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

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

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

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

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

#### **Article 27. Consideration of an Application for Authorising Concerted Actions, the Concentration of Economic Entities**

1. Bodies of the Antimonopoly Committee of Ukraine shall consider an application for authorising concerted actions within a period of 30 days from the date when the relevant body of the Antimonopoly Committee of Ukraine accepted the application.

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

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

2. An application shall not be considered if a request of the applicant for the recall of the application is submitted, which is fixed by a decision to be taken by the relevant bodies of the Antimonopoly Committee of Ukraine.

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

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

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

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

1. If bodies of the Antimonopoly Committee of Ukraine, within the period of the consideration of an application which is provided for by Part 1 of Article 27 of the present Law, do not start the consideration of a case sounding in concerted actions, concentration, a decision on authorising the concerted actions, the concentration shall be considered as taken.

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

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

1. On the basis of both an application for giving preliminary conclusions and attached information, bodies of the Antimonopoly Committee of Ukraine shall give preliminary conclusions on concerted actions, whereas the Antimonopoly Committee of Ukraine or an administrative board of the Antimonopoly Committee of Ukraine shall give preliminary conclusions on concentration, to economic entities, bodies of power, bodies of local self-government, bodies of administrative and economic management and control.

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

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

the possibility of authorising concerted actions, concentration;

the possibility of opposing concerted actions, concentration;

the necessity of authorising concerted actions, concentration or lack of that sort of necessity;

the insufficiency of information for making any conclusion.

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

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

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

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

3. The period of the consideration of a case sounding in concerted actions or concentration shall not exceed three months. The course of the period shall start from the date when the complete information was submitted by the applicant and when an expert conclusion was received in accordance with Parts 1 and 2 of the present Article. If during the period of the case consideration bodies of the Antimonopoly Committee of

Ukraine do not arrive at a decision, it shall be considered that the concerted actions or the concentration is authorised.

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

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

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

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

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

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

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

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

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

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

by a state commissioner of the Antimonopoly Committee of Ukraine, the relevant administrative board of a territorial board of the Antimonopoly Committee of Ukraine — on authorising the concerted actions with the exception of authorisation given on the basis of Part 1 Article 10 of the present Law, on prohibiting against the concerted actions.

2. It may be stipulated in decisions of bodies of the Antimonopoly Committee of Ukraine on authorising concerted actions, concentration that participants in the concerted actions, the concentration should satisfy and fulfil such requirements and obligations that eliminate or ease the impact of the concerted actions on competition. Stipulations and obligations of that sort may concern, in particular, restrictions in terms of the management, use or disposal of property and they may concern the pledge of an economic entity to alienate the property.

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

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

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

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

6. Information on decisions ensuing from the consideration of applications, cases sounding in concerted actions, concentration may be published in the ..... (Official Newsletter of Ukraine), in the other printed or electronic media or may be promulgated in a different way.

### **Article 32. Grounds for the Termination of the Consideration of a Case Sounding in Concerted Actions, the Concentration of Economic Entities**

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

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

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

2. If the consideration of a case is terminated, the applicant shall not be deprived of the right to submit a repeated application for authorising concerted actions, concentration to the Antimonopoly Committee of Ukraine, its territorial office.

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

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

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

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

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

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

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

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

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

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

2. The duty shall be exacted in connection with:

the submission of applications for authorising concentration — in an amount of 300 tax-deductible minimum citizen incomes; if the amount of the duty is paid in accordance with Paragraph 4 of the present Part for giving preliminary conclusions on these matters — in an amount of 220 tax-deductible minimum citizen incomes;

the submission of applications for authorising concerted actions — in an amount of 150 tax-deductible minimum citizen incomes; if the amount of the duty is paid in accordance with Paragraph 4 of the present Part for giving preliminary conclusions on these matters — in an amount of 70 tax-deductible minimum citizen incomes;

the submission of applications for giving conclusions in accordance with Articles 14 and 29 of the present Law — in an amount of 80 tax-deductible minimum citizen incomes;

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

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

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

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

## ***Section VII. CONSIDERATION OF CASES SOUNDING IN VIOLATIONS OF THE LAWS ON THE PROTECTION OF ECONOMIC COMPETITION***

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

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

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

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

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

### ***Article 36. Bases for Initiating the Consideration of a Case***

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

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

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

the initiative of bodies of the Antimonopoly Committee of Ukraine.

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

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

### **Article 37. Initiating the Consideration of a Case**

1. If signs of a violation of the laws on the protection of economic competition are detected, bodies of the Antimonopoly Committee of Ukraine shall issue an order on the initiation of the case consideration.
2. The order on the initiation of the case consideration shall be sent to the defendant within three working days from the date when the order was issued.
3. A notification that the case consideration has been initiated shall be sent to the applicant and third persons.

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

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

### **Article 39. Persons Participating in a Case**

1. The parties, third persons, their representatives shall be persons participating in a case.
2. The defendant and the applicant shall be the parties to a case (if the case was initiated on the basis of the relevant application).

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

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

A person involved in a case because a decision can substantially affect its rights and interests which are protected by the present Law shall be a third person. Bodies of the Antimonopoly Committee of Ukraine shall issue an order on the definition of the third person, which shall be notified to persons participating in the case.
3. Having established that another person should be involved in the case as the defendant, bodies of the Antimonopoly Committee of Ukraine shall issue an order to replace the original defendant or to involve co-defendants, which is notified to persons participating in the case.

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

1. Persons who participate (participated) in a case shall have the right:
  - to familiarise themselves with materials of the case (with the exception of restricted access information and information whose disclosure can infringe the interests of other persons who participate (participated) in the case or can hinder the further consideration of the case);
  - to provide evidence, to submit applications, verbal and written explanations (objections);
  - to receive copies of decisions on the case (extracts from them with the exception of restricted access information and information whose disclosure can infringe the interests of other persons who participated in the case);
  - to appeal against decisions in accordance with a procedure established by laws.
2. Persons participating in a case shall be obliged to use their rights fairly.

### **Article 41. Ensuring Evidence**

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

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

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

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

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

#### **Article 42. Prescription Period of Bringing to Responsibility for a Violation of the Laws on the Protection of Economic Competition**

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

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

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

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

#### **Article 43. Ensuring an Expert Examination**

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

2. When establishing an expert examination or defining the circle of questions to be addressed to experts, the relevant body of the Antimonopoly Committee of Ukraine shall have the right to ask the parties and other persons participating in the case about their proposals. An order relating to the establishment of an expert examination shall mention both questions which require conclusions of experts and a person who will conduct an expert examination.

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

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

5. An expert shall have the right to refuse to make a conclusion if given materials are insufficient or if he has no knowledge necessary for performing an entrusted duty.

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

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

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

#### **Article 44. Seizure and Arrest of Evidence**

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

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

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

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

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

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

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

4. If it is impossible to seize evidence, a state commissioner, the head of a territorial office of the Antimonopoly Committee of Ukraine or officials of the Antimonopoly Committee of Ukraine or its territorial office authorised by the state commissioner or the head of a territorial office shall arrest objects, documents, other media for information which can be evidence or the source of evidence in the case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Article 47. Preliminary Decision on a Case**

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

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

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

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

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

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

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

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

- the establishment of the fact of a violation of the laws on the protection of economic competition;
- the termination of a violation of the laws on the protection of economic competition;
- an obligation placed on a body of power, a body of local self-government, a body of administrative and economic management and control to repeal or amend such a decision or to break such agreements that were considered as anticompetitive actions of bodies of power, bodies of local self-government, bodies of administrative and economic management and control;
- the establishment of the fact that an economic entity occupies a monopoly (dominant) position on the market;
- the compulsory split-up of an economic entity which occupies a monopoly (dominant) position on the market;
- the imposition of a fine;
- the blocking of securities;
- the elimination of consequences of violations of the laws on the protection of economic competition;
- the repeal of authorisation for concerted actions if actions prohibited in accordance with Article 19 of the present Law are committed;
- the publication, by the defendant at his expense, of the official information of the Antimonopoly Committee of Ukraine or its territorial office in terms of a decision taken in a case sounding in violations, including the publication of decisions to the full extent (with the exception of restricted access information and information defined by the relevant state commissioner, the head of a territorial office whose disclosure can infringe the interests of other persons participating in the case) within the period and by the method which are defined by the decision or laws;
- the close of the case proceedings.

2. Bodies of the Antimonopoly Committee of Ukraine which took a decision shall have no right to repeal or amend it with the exception of the cases provided for by Article 58 of the present Law. They shall have the right to correct misprints or obvious arithmetical mistakes in the decision, to interpret their decision, without changing its content, and to make an additional decision if in terms of a matter studied during the case consideration no decision was taken.

3. In order to protect the public interests or to prevent negative and irretrievable consequences for economic entities, bodies of the Antimonopoly Committee of Ukraine shall take a decision on considering the decision taken in accordance with Part 1 of the present Article, Part 1 of Article 30 of the Law of Ukraine "On the Protection Against Unfair Competition" as a decision suspended in connection with:

- the initiation of such a case by a court of justice, a court of arbitration that is directed towards repealing the above decision;
- an inspection which results from an application submitted by a party to the relevant decision (order) of a court of justice, a court of arbitration and which is carried out as supervision;
- the review which results from an application submitted by a party to the relevant decision (order) of a court of justice, a court of arbitration and which is based on newly-found circumstances.

The decision of a body of the Antimonopoly Committee of Ukraine which is provided for by the present Part may be taken on the basis of an application submitted by persons participating in the case or on the initiative of bodies of the Antimonopoly Committee of Ukraine. That sort of decision may be taken both before the submission of the relevant application to a court of justice, a court of arbitration and after the submission of the applicant unless the court of justice, the court of arbitration suspends such a decision of the body of the Antimonopoly Committee of Ukraine that is appealed against.

**Article 49. Grounds for Closing the Consideration of a Case Sounding in a Violation  
of the Laws on the Protection of Economic Competition**

The consideration of a case sounding in a violation of the laws on the protection of economic competition shall be closed without taking a decision on the subject of the case if:

the case is not to be considered by the Antimonopoly Committee of Ukraine, its territorial office;  
the defendant or its whereabouts are not established;  
the defendant being a legal person is liquidated;  
a case based on the same grounds was or is being considered by bodies of the Antimonopoly Committee of Ukraine with respect to the same defendant;  
the commitment of the violation is not proved;  
there are other grounds provided for by laws.

### **Section VIII. RESPONSIBILITY FOR VIOLATIONS OF THE LAWS ON THE PROTECTION OF ECONOMIC COMPETITION**

#### **Article 50. Violations of the Laws on the Protection of Economic Competition**

The following violations shall be violations of the laws on the protection of economic competition:

- 1) anticompetitive concerted actions;
- 2) abuses of a monopoly (dominant) position;
- 3) anticompetitive actions of bodies of power, bodies of local self-government, bodies of administrative and economic management and control;
- 4) the non-fulfilment of a decision, a preliminary decision taken by bodies of the Antimonopoly Committee of Ukraine or their incomplete fulfilment;
- 5) the commitment of such actions by economic entities participating in concerted actions that are prohibited in accordance with Part 5 of Article 10;
- 6) the delegation of authorities of bodies of power or bodies of local self-government in the cases prohibited in accordance with Article 16 of the present Law;
- 7) the commitment of the actions prohibited in accordance with Article 17 of the present Law;
- 8) the restrictive and discriminatory activities prohibited in accordance with Part 2 of Article 18, Articles 19 and 20 of the present Law;
- 9) the restrictive activities prohibited in accordance with Part 1 of Article 18 of the present Law;
- 10) the non-observance of the conditions provided for by Point 2 of Part 3 of Article 22 of the present Law;
- 11) a violation of provisions of such constituent documents of an economic entity established as a result of concentration that were agreed with bodies of the Antimonopoly Committee of Ukraine if this results in the restriction of competition;
- 12) concentration of economic entities without the relevant authorisation to be granted by bodies of the Antimonopoly Committee of Ukraine if that sort of authorisation is necessary;
- 13) the non-submission of information to the Antimonopoly Committee of Ukraine, its territorial office within periods established by bodies of the Antimonopoly Committee of Ukraine, the head of a territorial office or by normative and legal acts;
- 14) the submission of incomplete information to the Antimonopoly Committee of Ukraine, its territorial office within periods established by bodies of the Antimonopoly Committee of Ukraine, the head of its territorial office or by normative and legal acts;
- 15) the submission of inauthentic information to the Antimonopoly Committee of Ukraine, its territorial office;
- 16) the erection of barriers to officials of the Antimonopoly Committee of Ukraine, its territorial office when they carry out inspections, examinations, seize or arrest property, documents, objects or other media for information;
- 17) the offering of such pieces of advice by economic entities, associations, bodies of power, bodies of local self-government, bodies of administrative and economic management and control that induce to commit violations of the laws on the protection of economic competition or facilitate the commitment of violations of that sort;
- 18) such restrictions of economic activities of an economic entity that result from the fact that the economic entity submitted an application containing information about a violation of the laws on the protection of economic competition to the Antimonopoly Committee of Ukraine, its territorial office;

- 19) the non-fulfilment of such requirements and obligations by participants in concerted actions, concentration that were the stipulation made with respect to the decision on authorising the concerted actions, the concentration;
- 20) such restrictive activities of associations that are prohibited in accordance with Article 21 of the present Law.

### **Article 51. Types of Responsibility**

A violation of the laws on the protection of economic competition shall entail responsibility established by laws.

### **Article 52. Fines**

1. Bodies of the Antimonopoly Committee of Ukraine shall impose fines on associations, economic entities:

legal persons;

natural persons;

such a group of economic entities being legal and (or) natural persons that in accordance with Article 1 of the present Law is considered as an economic entity in the cases provided for by Part 4 of the present Article.

2. For the violations provided for by:

Points 1, 2, and 4 of Article 50 of the present Law fines shall be imposed in amounts not exceeding 10% of the income (proceeds) got by an economic entity from the sale of products (goods, work, services) in the accounting year directly preceding the year in which the fine is imposed. If there is an unlawfully got profit which exceeds 10% of the mentioned income (proceeds), a fine shall be imposed in an amount not exceeding the threefold amount of the unlawfully got profit. The amount of an unlawfully got profit may be calculated by means of evaluation;

Points 5, 8, 10, 11, 12, and 19 of Article 50 of the present Law fines shall be imposed in amounts not exceeding 5% of the income (proceeds) got by an economic entity from the sale of products (goods, work, services) in the accounting year directly preceding the year in which the fine is imposed;

Points 9, 13-16, and 18 of Article 50 of the present Law fines shall be imposed in amounts not exceeding 1% of the income (proceeds) got by an economic entity from the sale of products (goods, work, services) in the accounting year directly preceding the year in which the fine is imposed.

3. The income (proceeds) got by an economic entity from the sale of products (goods, work, services) shall be the total incomes (proceeds) got by all the legal and natural persons constituting such a group that is considered as an economic entity in accordance with Article 1 of the present Law.

4. If a number of legal and (or) natural persons being economic entities which constitute a group considered as an economic entity had committed such acts (actions, inactivity) that resulted in a violation of the laws on the protection of economic competition by the mentioned economic entity and (if) have the rights without which the commitment of the violation would be impossible and (if) got or can get advantages in competition or other benefits, a fine must be imposed on an economic entity in the person of legal and (or) natural persons who committed the above acts (actions, inactivity) or got or can get the above benefits. A possibility of having an impact on activities of other legal and (or) natural persons being economic entities, a possibility of getting a part of their income shall be considered, in particular, as benefits.

5. If there is no income (proceeds) or if the defendant, in spite of a request of bodies of the Antimonopoly Committee of Ukraine, the head of its territorial office, submits no information about the amount of the income (proceeds), the fine provided for by Paragraph 2 of Part 2 of the present Article shall be imposed in an amount not exceeding 20,000 tax-deductible minimum citizen incomes, the fine provided for by Paragraph 3 of Part 2 of the present Article shall be imposed in an amount not exceeding 10,000 tax-deductible minimum citizen incomes, the fine provided for by Paragraph 4 of Part 2 of the present Article shall be imposed in an amount not exceeding 2,000 tax-deductible minimum citizen incomes.

6. Decisions on the imposition of fines exceeding 1,000 tax-deductible minimum citizen incomes shall be taken exclusively by the Antimonopoly Committee of Ukraine, an administrative board of the Antimonopoly Committee of Ukraine at their sessions.

4. If an economic entity worked less than a year, an amount of the fine must be calculated on the basis of the income (proceeds) got by the economic entity before the moment when the decision to impose the fine was taken.

### **Article 53. Compulsory Split-up**

1. If an economic entity abuses its monopoly (dominant) position on the market, bodies of the Antimonopoly Committee of Ukraine shall have the right to take a decision on carrying out the compulsory split-up of the economic entity which occupies a monopoly (dominant) position.

2. The compulsory split-up shall not be applied if:

in terms of organisation or territory it is impossible to separate enterprises, structural subdivisions or structural units;

there is a close technological connection between enterprises, structural subdivisions or structural units (if the volume of output used by the economic entity exceeds 30% of the volume of gross output of the enterprise, the structural subdivision or structural unit).

3. The decision of bodies of the Antimonopoly Committee of Ukraine on the compulsory split-up of an economic entity shall be fulfilled within a period which cannot be shorter than six months.

4. The reorganisation of an economic entity, subject to compulsory split-up, shall be carried out at its discretion on condition that its monopoly (dominant) position on the market is eliminated.

### **Article 54. Administrative Responsibility of Officials and Other Employees of Economic Entities, Bodies of Power, Bodies of Local Self-government, Bodies of Administrative and Economic Management and Control**

1. Officials and other employees of economic entities, bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall bear administrative responsibility in accordance with laws for the commitment of the violations provided for by Points 13-16 of Article 50 of the present Law.

2. Officials of bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall bear responsibility in accordance with laws for the commitment of the violations provided for by Points 4, 13-16 of Article 50 of the present Law.

### **Article 55. Reimbursement for Damages**

1. Persons who suffer damage resulting from a violation of the laws on the protection of economic competition may apply to a court of justice, a court of arbitration for the reimbursement for damages.

2. Damages resulting from the commitment of such violations of the laws on the protection of economic competition that are provided for by Points 1, 2, 5, 10, 12, 18, 19 of Article 50 of the present Law shall be reimbursed for in the double amount of the damages by the person who committed the violation.

### **Section IX. PROCEDURE OF FULFILLING, VERIFYING, REVIEWING, APPEALING AGAINST DECISIONS, ORDERS, THE PROCEDURE OF CALCULATING PERIODS AND THE EXCHANGE OF INFORMATION**

#### **Article 56. Procedure of Fulfilling Decisions and Orders of Bodies of the Antimonopoly Committee of Ukraine, Heads of Territorial Offices of the Antimonopoly Committee of Ukraine**

1. A decision (an extract from a decision with the exception of restricted access information and information defined by the relevant state commissioner, the head of a territorial office whose disclosure can infringe the interests of other persons participating in the case consideration), an order of bodies of the Antimonopoly Committee of Ukraine, heads of its territorial offices shall be brought to the notice of the relevant persons, for their fulfilment, by means of sending them by post, by means of handing them against receipt or by notifying the relevant persons of them in a different way.

If it is impossible to deliver the decision as a result of

the absence of the natural person from the last known place of residence (registration address);

the absence of officials or authorised representatives of the economic entity, the body of administrative and economic management and control from the relevant legal address,

the decision of bodies of the Antimonopoly Committee of Ukraine shall be considered as delivered in ten days from the date when information on the taken decision is published by the printed media (the ..... (Voice of Ukraine), the newspaper of the Supreme Rada (Parliament) of Ukraine; the ..... (Governmental Courier), the newspaper of the Cabinet of Ministers of Ukraine; the ..... (Official Newsletter of Ukraine); the printed media of the relevant regional council in accordance with the last known place of residence (registration address), the legal address of the defendant).

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

3. A person fined by a body of the Antimonopoly Committee of Ukraine shall pay the fine within a period of 30 days from the date when the decision to impose the fine is received.

4. If a fine is imposed on an economic entity in accordance with Part 4 of Article 52, the fine may be paid fully and partially by any legal or natural person who is comprised by the economic entity on which the fine is imposed. The payment of the fine in full by one legal or natural person or by several persons shall absolve the remaining persons, for whom the fine was paid, from the payment of the fine.

5. The additional fine equal to 1.5% of the imposed fine shall be exacted for every day of the non-payment of the imposed fine. The total amount of additional fines shall not exceed the fine imposed by the relevant decision of a body of the Antimonopoly Committee of Ukraine.

The calculation and imposition of the additional fine shall be discontinued from the date when a court of justice or a court of arbitration takes a decision on exacting the original fine.

The calculation and imposition of the additional fine shall be suspended for the period when a court of justice or a court of arbitration considers, verifies or reviews:

a case sounding in the repeal of a decision of a body of the Antimonopoly Committee of Ukraine on imposing the original fine;

the relevant decision (judgement) of a court of justice, a court of arbitration for supervision;

the relevant decision (judgement) of a court of justice, a court of arbitration in connection with newly-found circumstances.

6. Bodies of the Antimonopoly Committee of Ukraine, proceeding from an application submitted by the person on whom the fine was imposed, shall have the right to postpone or spread the payment of the fine imposed by them.

7. If the fine is not paid within the period provided for by the decision and if the additional fine is not paid, bodies of the Antimonopoly Committee of Ukraine shall exact the original fine and the additional fine in legal form.

8. Exacted original fines and additional fines shall be transferred to a special fund of the state budget of Ukraine, shall be considered as incomings owned by the Antimonopoly Committee of Ukraine, and shall be used to satisfy needs of the Antimonopoly Committee of Ukraine unless laws directly provide for otherwise.

9. Decisions of the relevant bodies and officials of the Antimonopoly Committee of Ukraine on the imposition of administrative penalties on officials and other employees of economic entities, bodies of power, bodies of local self-government, bodies of administrative and economic management and control shall be fulfilled in accordance with a procedure established by laws.

#### **Article 57. Verification of Decisions, Cases Sounding in Violations of the Laws on the Protection of Economic Competition and Verification of Applications and Cases Sounding in Concerted Actions**

1. Decisions taken by an administrative board of a territorial office of the Antimonopoly Committee of Ukraine, a state commissioner of the Antimonopoly Committee of Ukraine, an administrative board of the Antimonopoly Committee of Ukraine on cases sounding in violations of the laws on the protection of economic competition, on applications and cases sounding in concerted actions may be verified on the basis of an application submitted by persons participating in the case or on one's own initiative in accordance with a procedure established by the Antimonopoly Committee of Ukraine.

2. The application for the verification of a decision may be submitted within a period of two months from the date when the decision is received. The period may not be renewed.

3. Decisions taken by an administrative board of a territorial office of the Antimonopoly Committee of Ukraine shall be verified by an administrative board of the Antimonopoly Committee of Ukraine or by the Antimonopoly Committee of Ukraine; decisions taken by a state commissioner of the Antimonopoly

Committee of Ukraine, by an administrative board of the Antimonopoly Committee of Ukraine shall be verified by the Antimonopoly Committee of Ukraine.

4. Bodies of the Antimonopoly Committee of Ukraine which verify decisions may suspend the fulfilment of the relevant decision until its verification has been completed and persons participating in the case shall be notified in writing of the fact.

5. Bodies of the Antimonopoly Committee of Ukraine, proceeding from the results of the decision verification, shall have the right:

to retain the decision;

to change the decision;

to repeal the decision partially and to refer the case for new consideration in terms of the repealed part;

to repeal the decision and to take a new decision or to refer the case for new consideration or to close the case proceedings.

**Article 58. Review of Decisions on Cases Sounding in Violations of the Laws on the Protection of Economic Competition and on Applications and Cases Sounding in Concerted Actions, Concentration**

1. Bodies of the Antimonopoly Committee of Ukraine on their initiative or on the basis of applications submitted by persons may review decisions taken by them on cases sounding in violations of the laws on the protection of economic competition and on applications and cases sounding in concerted actions and concentration:

if substantial circumstances were unknown and might not be known to the bodies of the Antimonopoly Committee of Ukraine, which resulted in taking the unlawful or groundless decision;

if the decision was taken on the basis of unreliable information, which resulted in taking the unlawful or groundless decision;

if participants in the concerted actions or the concentration do not fulfil such requirements and obligations that were the stipulation made with respect to the decision taken by the bodies of the Antimonopoly Committee of Ukraine on the concerted actions or the concentration in accordance with Part 2 Article 31 of the present Law;

if there are no circumstances on whose basis the decision on authorising the concerted actions or the concentration was taken;

if there are other grounds provided for by laws of Ukraine.

Bodies of the Antimonopoly Committee of Ukraine which took a decision may suspend its fulfilment until its review has been completed and persons participating in the case shall be notified of the fact in writing.

2. The review of decisions on cases sounding in violations of the laws on the protection of economic competition, on applications and cases sounding in concerted actions and concentration shall be allowed in the cases provided for:

by Paragraphs 2 and 3 of Part 1 of the present Article — within a period of five years from the date when the relevant decision was taken;

by Paragraphs 4 and 5 of Part 1 of the present Article — within the period of the decision validity;

by Paragraph 6 of Part 1 of the present Article — within a period of three years from the date when the decision was taken unless laws provide for otherwise.

3. Bodies of the Antimonopoly Committee of Ukraine, proceeding from the results of the decision review, may:

retain the decision;

change the decision;

repeal the decision;

take such a new decision that is provided for by Articles 31 and 48 of the present Law, by Part 1 of Article 30 of the Law of Ukraine "On the Protection Against Unfair Competition."

4. If the Antimonopoly Committee of Ukraine, proceeding from the results of the decision review, takes a decision to prohibit the concentration, the state registration of the economic entity established as a result of the concentration shall be annulled in legal form on the basis of a claim to be lodged by the Antimonopoly Committee of Ukraine.

**Article 59. Grounds for Changing, Repealing or Considering Decisions of Bodies of the Antimonopoly Committee of Ukraine as Invalid**

1. The following shall be the grounds for changing, repealing or considering decisions of bodies of the Antimonopoly Committee of Ukraine as invalid:

the incomplete investigation of circumstances which are of importance to the case;  
such unproved circumstances that are of importance to the case and that are considered as established;  
the incompatibility of the decision conclusions with the case circumstances;  
the violation of or the incorrect application of norms of material or procedural law.

2. The violation of or the incorrect application of norms of procedural law may be the grounds for changing, repealing or considering a decision as invalid only if the violation results in taking an incorrect decision.

**Article 60. Appealing Against Decisions of Bodies of the Antimonopoly Committee of Ukraine**

1. The applicant, the defendant and a third party shall have the right to file an appeal to a court of justice against complete decisions of bodies of the Antimonopoly Committee of Ukraine or against parts of that sort of decisions within a period of two months from the date when the decision was received. The period may not be renewed.

2. Appeals against decisions of the Antimonopoly Committee of Ukraine, an administrative board of the Antimonopoly Committee of Ukraine and a state commissioner of the Antimonopoly Committee of Ukraine shall be taken to the Higher Court of Arbitration of Ukraine. Appeals against decisions of an administrative board of a territorial office of the Antimonopoly Committee shall be taken to the Court of Arbitration of the Autonomous Republic of the Crimea, to regional courts of arbitration, to the Kyiv and Sevastopol City Courts of Arbitration.

3. The acceptance, by a court of justice or a court of arbitration, of an appeal for considering a decision of a body of the Antimonopoly Committee of Ukraine as invalid shall not suspend its fulfilment with the exception of the cases provided for by Part 4 of the present Article.

4. The institution of proceedings, by a court of justice or a court of arbitration, to repeal such a decision of a body of the Antimonopoly Committee of Ukraine that was taken:

in accordance with Part 1 of Article 48 of the present Law, Part 1 of Article 30 of the Law of Ukraine "On the Protection Against Unfair Competition";

on the basis of the results of the decision verification in accordance with Part 5 of Article 57 of the present Law;

on the basis of the results of the decision review in accordance with Part 3 of Article 58 of the present Law,

and supervisory verification or a review based on both newly-found circumstances and an application of a party to the relevant decision (judgement) of a court of justice, a court of arbitration shall suspend the fulfilment of the mentioned decision of a body of the Antimonopoly Committee of Ukraine for the period of the case consideration, for the period of the verification or review of the relevant decision (judgement) of a court of justice, a court of arbitration unless the body of the Antimonopoly Committee of Ukraine in accordance with Part 3 of Article 48 of the present Law or the court of justice or the court of arbitration defines otherwise.

5. If there are sufficient grounds, a court of justice, a court of arbitration, irrespective of the provisions of Part 4 of the present Article, may suspend the validity of a decision taken by a body of the Antimonopoly Committee of Ukraine.

**Article 61. Notification of Court Cases**

1. A court of justice, a court of arbitration at the request of the Antimonopoly Committee of Ukraine shall notify the Antimonopoly Committee of Ukraine of such court cases that are considered on the basis of the laws on the protection of economic competition.

2. A state commissioner of the Antimonopoly Committee of Ukraine, the head of a territory office of the Antimonopoly Committee of Ukraine or officials of the Antimonopoly Committee of Ukraine, its territorial offices empowered by the state commissioner or the head of a territory office respectively shall have the right to familiarise themselves with materials of the cases and to receive copies of documents. The Antimonopoly Committee of Ukraine and its territorial offices shall have the right to join the case in the capacity of such third persons that establish no independent requirements for the subject of the argument if the decision can impact on their rights and duties in the course of exercising state control over the protection of economic competition.

#### **Article 62. Definition and Calculation of Periods in the Laws on the Protection of Economic Competition**

1. Periods within which the relevant actions are performed, in particular during the consideration of applications for authorising concerted actions, concentration of economic entities, during the consideration of cases sounding in violations of the laws on the protection of economic competition, etc., shall be established by the laws on the protection of economic competition, by bodies of the Antimonopoly Committee of Ukraine, by the head of a territorial office of the Antimonopoly Committee of Ukraine. The mentioned periods shall be defined by a calendar date, by the fixation of an inevitable event or by a period.

2. The course of a period calculated in years, months or days shall begin next day after the calendar date determining its beginning or when the event determining its beginning comes into being.

A period calculated in years shall end in the relevant month and on the relevant date in the last year of the period.

A period calculated in months shall end on the relevant date in the last month of the period. If the end of a period calculated in months coincides with such a month that does not comprise the relevant day, the period shall end on the last day of the month.

If the last day coincides with a holiday, the next working day shall be considered as the day when the period ends.

The last day of a period shall end at 12 o'clock at night; if it is necessary to perform an action within the above period at the Antimonopoly Committee of Ukraine or at its territorial office, the period shall end at the moment when the working day ends.

3. A period shall not be considered as exceeded if necessary documents are handed in to a post office.

#### **Article 63. Exchange of Information**

1. Economic entities which are linked by relations of control in accordance with Article 1 of the present Law shall be obliged to ensure the exchange of information between themselves, including information on the cases provided for by Part 2 of Article 22 of the present Law, and shall take other measures in such a way and to such an extent that would ensure the prevention of violations of the laws on the protection of economic competition.

2. The non-fulfilment, by economic entities, of the requirements provided for by Part 1 of the present Article shall not relieve other economic entities, which would have received information and which would have taken other measures, from responsibility.

#### **Section X. FINAL PROVISIONS**

1. The present Law shall come into force in a year after its publication with the exception of Points 2 and 3 of the present Section which shall come into force from the date of their publication.

2. Until the present Law has come into force, economic entities shall appealed to bodies of the Antimonopoly Committee of Ukraine for their authorising concerted actions if the actions take place on the date when the present Law comes into force and if the actions can be authorised in accordance with Article 10 of the present Law.

3. Concerted actions with respect to which an application is submitted in accordance with Point 2 of the present Section shall be considered as authorised unless bodies of the Antimonopoly Committee of Ukraine, within a year from the date when the present Law comes into force, take a decision to prohibit the concerted actions.

4. Article 44 of the present Law in terms of its provisions relating to both the penetration into the place of abode or into other property of a person and making an inspection or a search there shall come into force from the date when a law which provides for a procedure of taking a decision, by a court of justice, on penetrating into the place of abode or into other property of a person, to make an inspection or a search there comes into force.

5. The Cabinet of Ministers of Ukraine shall be instructed, within a period of three months from the date when the Law of Ukraine "On the Protection of Economic Competition" comes into force:

to submit, to the Supreme Rada (Parliament) of Ukraine, its proposals to bring legislative acts of Ukraine to conformity with the present Law;

to bring its normative and legal acts to conformity with the present Law;

to ensure the review and repeal, by ministries and other central bodies of executive power of Ukraine, of their normative and legal acts which contradict the present Law;

to develop such normative and legal acts that are provided for by the present Law.

6. The following shall be considered as repealed:

the Law of Ukraine "On the Limitation of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activities" (....., 1992 •., • 21, ••. 296; 1993 •., • 27, ••. 291; 1995 •., • 28, ••. 202; 1998 •., • 34, ••. 229) (Records of the Supreme Rada (Parliament) of Ukraine, 1992, N 21, p. 296; 1993, N 27, p. 291; 1995, N 28, p. 202; 1998, N 34, p. 229);

Point 12 of the Law of Ukraine "On Amending Some Legislative Acts of Ukraine Relating to the Protection of Intellectual Property" (....., 1995, • 13, ••. 85) (Records of the Supreme Rada (Parliament) of Ukraine, 1995, N 13, p. 85);

Point 3 of Section I of the Law of Ukraine "On Amending Some Laws of Ukraine Which Provide for the Indisputable Exaction of Finances from Banking Accounts of Such Legal and Natural Persons That Are Economic Entities" (....., 1998 •., • 10, ••. 36) (Records of the Supreme Rada (Parliament) of Ukraine, 1998, N 10, p. 36).

**L. Kuchma**  
**President of Ukraine**

The city of Kyiv  
11 January 2001  
No 2210-III



**ON THE ANTIMONOPOLY COMMITTEE OF UKRAINE**

*(As of 19 October 2000)*

**Chapter I. GENERAL PROVISIONS**

**Article 1. Antimonopoly Committee of Ukraine**

The Antimonopoly Committee of Ukraine shall be a central body of executive power which has special status and whose purpose of activities is to secure the state protection of competition in entrepreneurial activities.

**Article 2. Subordination and Accountability of the Antimonopoly Committee of Ukraine**

The Antimonopoly Committee of Ukraine shall be subordinate to the President of Ukraine and shall be accountable to the Supreme Rada (Parliament) of Ukraine.

The Antimonopoly Committee of Ukraine shall annually submit a report on its activities to the Supreme Rada (Parliament) of Ukraine .

**Article 3. Tasks of the Antimonopoly Committee of Ukraine**

The basic tasks of the Antimonopoly Committee of Ukraine shall be as follows:  
exercising state control over the observance of the antimonopoly legislation;  
forestalling, detecting and terminating violations of the antimonopoly legislation;  
exercising control over economic concentration;  
favouring the development of fair competition.

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

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

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

**Article 5. Legislation Concerning the Antimonopoly Committee of Ukraine**

The Antimonopoly Committee of Ukraine shall perform its activities in accordance with the Constitution of Ukraine, the Law of Ukraine "On the Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities," the Law of Ukraine "On the Protection Against Unfair Competition," the present Law, other laws and other normative and legal acts adopted in accordance with these laws.

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

The terms "product," "market of a product (product market)," "bodies of administrative and economic government and control," "competition," "monopoly position," "economic entity" and "information" shall be used in the present Law in the appropriate meanings defined by the Law of Ukraine "On the Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities."

The term "bodies of power" shall be used in the meaning of the term "bodies of state power" defined by the Law of Ukraine "On the Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities."

## ***Chapter II. STRUCTURE, COMPETENCE, AND ORGANISATION OF ACTIVITIES OF THE ANTIMONOPOLY COMMITTEE OF UKRAINE***

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

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

The First Deputy Chairman of and three Deputy Chairmen of the Antimonopoly Committee of Ukraine shall be appointed from among the State Commissioners.

The Antimonopoly Committee of Ukraine shall establish its territorial offices.

The Antimonopoly Committee of Ukraine and its territorial offices shall constitute the system, headed by the Chairman of the Committee, of bodies of the Antimonopoly Committee of Ukraine.

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

### ***Article 7. Competence of the Antimonopoly Committee of Ukraine***

The Antimonopoly Committee of Ukraine according to the above entrusted tasks shall:

exercise control over the observance of the antimonopoly legislation in the course of economic concentration, in particular during the establishment, reorganisation, liquidation of economic entities, during the establishment of associations of enterprises, during the entry of one or several economic entities into an association, during the transformation of bodies of power, bodies of local self-government, bodies of administrative and economic government and control into associations of economic entities, during the purchase of or the acquisition, by any other means for the purpose of owning, of or the obtaining, for the purpose of managing (using), of stocks (shares), assets (property) in the form of integrated property complexes of economic entities or their structural subdivisions, during the lease of integrated property complexes of economic entities or their structural subdivisions, during the acquisition, by any other means, of control over economic activities;

exercise control over the observance of the antimonopoly legislation in the course of economic activities of economic entities and in the course of the implementation of powers by bodies of power, bodies of local self-government, bodies of administrative and economic government and control with respect to economic entities;

examine cases concerning violations of the antimonopoly legislation and, proceeding from the results, shall take decisions within its powers;

apply to a court of justice or a court of arbitration with acts (applications) in connection with violations of the antimonopoly legislation, shall send, to law protective bodies, materials concerning such violations of laws that contain indications of a crime;

give recommendations and shall make proposals with respect to taking measures directed towards the limitation of monopolism, the development of entrepreneurship and competition to bodies of state power, offices, bodies of local self-government, economic entities and their associations;

give recommendations, to bodies of power, bodies of local self-government, bodies of administrative and economic government and control, economic entities, with respect to the termination of such actions (inactivity) that have indications of violations of the antimonopoly legislation, with respect to the elimination of both reasons of the violations and conditions facilitating the violations and, the violations having been terminated, with respect to taking measures to overcome the effects of the violations within terms established by the Committee;

take part in the elaboration of and, in accordance with the established procedure, shall submit, for examination, drafts of such legislative acts that regulate matters of the development of competition and competition policy as well as the demonopolisation of the economy;

take part in the conclusion of interstate agreements, in the elaboration and implementation of international projects and programs and shall co-operate with governmental bodies and non-governmental organisations of foreign states on matters laying within the competence of the Antimonopoly Committee of Ukraine;

generalise the practice of application of the antimonopoly legislation, shall work out proposals to improve it;

approve the estimate of incomes and expenditures of the Antimonopoly Committee of Ukraine and its territorial offices;

work out and organise carrying out measures directed towards the forestalling of violations of the antimonopoly legislation;

systematically inform the population of Ukraine on activities of the Committee;

perform other actions, within its powers, to exercise control over the observance of the antimonopoly legislation.

#### **Article 8. Powers of the Antimonopoly Committee of Ukraine**

The Antimonopoly Committee of Ukraine, within the competence given to it, shall have the right:

to define boundaries of a product market and to define monopoly position of economic entities on the product market;

to give, to economic entities, binding regulations concerning the termination of violations of the antimonopoly legislation and the renewal of the initial state of affairs as well as concerning the compulsory split-up of monopoly formations;

to give, to bodies of power, bodies of local self-government, bodies of administrative and economic government and control, binding regulations concerning the repealing or amending of unlawful acts adopted by them, concerning the termination of violations and the rupture of such agreements that were concluded by them and that contradict the antimonopoly legislation; shall prohibit or authorise the establishment of monopoly formations by bodies of power, bodies of local self-government, bodies of administrative and economic government and control as well as economic entities;

to place binding applications concerning the annulment of licenses, the termination of operations of economic entities in the sphere of external economic activities before bodies of power if the economic entities violate the antimonopoly legislation;

to impose fines and to apply other sanctions in the cases provided for by the effective legislation;

to adopt such normative and legal acts in accordance with its competence, in particular those concerning anticompetitive concerted actions, abuses of monopoly (dominant) position on the market, discrimination practised by bodies of power, bodies of local self-government, bodies of administrative and economic government and control, concerning the procedure of examining applications for giving the Committee's consent to the economic concentration of economic entities, concerning the procedure of examining cases associated with violations of the antimonopoly legislation, concerning the procedure of the fulfilling, inspecting, revising and appealing against decisions of the Antimonopoly Committee of Ukraine as well as those concerning unfair competition, that are binding for bodies of power, bodies of local self-government, bodies of administrative and economic government and control, economic entities; shall have the right to control their fulfilment and to elucidate their application;

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

#### **Article 9. Chairman of the Antimonopoly Committee of Ukraine**

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

The term of office of the Chairman of the Antimonopoly Committee of Ukraine shall be seven years.

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

The Chairman of the Antimonopoly Committee of Ukraine may be dismissed if he commits a crime, a flagrant violation of official duties and if it is impossible for him to fulfil the duties owing to the state of health. The Chairman of the Antimonopoly Committee of Ukraine shall have the right

to submit his resignation to the President of Ukraine. The resignation of the Chairman of the Committee shall not entail laying down powers by the State Commissioners of the Antimonopoly Committee of Ukraine.

Instead of the Chairman of the Antimonopoly Committee of Ukraine whose powers are terminated before the established time, a new Chairman shall be appointed for the remaining term.

The Chairman of the Antimonopoly Committee of Ukraine shall:

head the Antimonopoly Committee of Ukraine and shall direct its activities;

submit proposals, to the Prime Minister of Ukraine, concerning the appointment and dismissal of the Deputy Chairmen and the State Commissioners of the Antimonopoly Committee of Ukraine;

distribute duties among the Deputy Chairmen and the State Commissioners of the Antimonopoly Committee of Ukraine;

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

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

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

establish territorial offices within the estimate, provisional administrative boards of the Antimonopoly Committee of Ukraine for the examination of both cases concerning violations of the antimonopoly legislation and other matters in accordance with the Committee's competence;

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

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

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

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

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

#### ***Article 10. Deputy Chairmen of the Antimonopoly Committee of Ukraine***

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

The Deputy Chairmen of the Antimonopoly Committee of Ukraine shall fulfil certain functions of the Chairman according to his instructions and shall deputise for the Chairman of the Committee in the case of his absence or if it is impossible for him to exercise his powers.

If the Deputy Chairmen of the Antimonopoly Committee of Ukraine are absent, his powers shall be fulfilled by a State Commissioner.

#### ***Article 11. State Commissioners of the Antimonopoly Committee of Ukraine***

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

The term of office of the State Commissioners of the Antimonopoly Committee of Ukraine shall be seven years.

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

Instead of the State Commissioner who quitted the Committee before the established time, a new State Commissioner shall be appointed for the remaining term.

The State Commissioners shall not be appointed for more than two terms in succession.

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

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

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

### ***Article 12. Territorial Offices of the Antimonopoly Committee of Ukraine***

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

The territorial offices shall act on the basis of a statute to be approved by the Antimonopoly Committee of Ukraine.

A territorial office of the Antimonopoly Committee of Ukraine shall be under the direction of its Head. The Head and the Deputy Head of Territorial Office shall be appointed by the Chairman of the Antimonopoly Committee of Ukraine. The Deputy Head of Territorial Office shall be appointed by the Chairman of the Antimonopoly Committee at the recommendation of the Head of Territorial Office.

The Head of the Territorial Office of the Antimonopoly Committee of Ukraine in the Autonomous Republic of the Crimea shall be appointed in agreement with the Supreme Rada (Parliament) of the Autonomous Republic of the Crimea.

A Head of Territorial Office, a person who fulfils his duties shall have rights and shall be entrusted with duties within his competence in accordance with the present Law and the statute mentioned in part two of the present Article.

### ***Article 13. Sitzings of the Antimonopoly Committee of Ukraine***

Sittings of the Antimonopoly Committee of Ukraine shall be a form of work of the Committee in the capacity of the highest collegiate body.

The Antimonopoly Committee of Ukraine at its sittings shall:

examine and make decisions on cases laying within the jurisdiction of the Committee;

revise decisions made by the State Commissioners, the administrative boards, the Heads of Territorial Offices of the Committee;

adopt normative acts whose issuance lays within the powers of the Antimonopoly Committee of Ukraine; shall examine proposals concerning such amendments to the effective legislation that are based on generalised results of the application of the antimonopoly legislation;

examine and approve draft reports on activities of the Committee in order to submit them to the Supreme Rada (Parliament) of Ukraine;

examine statutes of consultative bodies of the Committee and their membership;

establish standing administrative boards;

hear the State Commissioners, the Heads of Territorial Offices and reports of leaders of the Committee's staff divisions;

examine other matters laying within the competence of the Antimonopoly Committee of Ukraine.

The Heads of Territorial Offices may take part, having an advisory vote, in sittings of the Antimonopoly Committee of Ukraine.

#### **Article 14. Administrative Boards of the Antimonopoly Committee of Ukraine**

In order to examine particular cases concerning violations of the antimonopoly legislation and other matters laying within the powers of the Committee, standing and temporary administrative boards shall be established from among the State Commissioners and the Heads of Territorial Offices of the Antimonopoly Committee of Ukraine and shall include at least three persons.

The administrative boards shall be formed according to branch, regional or other principles.

The Head of Territorial Office of the Antimonopoly Committee of Ukraine who is a member of an administrative board, when decisions are being made, shall have equal rights with the State Commissioners being members of the board.

#### **Article 15. Staff of the Antimonopoly Committee of Ukraine and Its Territorial Offices**

Organisation, technical, analytical, information, reference and other types of work directed towards the maintenance of activities of the Antimonopoly Committee of Ukraine or its territorial office and the preparation of materials for the examination of cases concerning violations of the antimonopoly legislation shall be carried out by the staff of the Antimonopoly Committee of Ukraine or its territorial office respectively.

The statute of structural subdivisions of the staff of the Antimonopoly Committee of Ukraine shall be approved by the Chairman of the Committee.

### **Chapter III. STATUS OF A STATE COMMISSIONER AND A HEAD OF TERRITORIAL OFFICE OF THE ANTIMONOPOLY COMMITTEE OF UKRAINE**

#### **Article 16. Rights and Duties of a State Commissioner and a Head of Territorial Office of the Antimonopoly Committee of Ukraine**

For the purpose of fulfilling the tasks with which the Committee is entrusted, a State Commissioner of the Antimonopoly Committee of Ukraine shall have the right:

to enter enterprises, offices, organisations freely by his identification card and shall have access to documents and other materials necessary for making inspections unless law provides for otherwise;

to demand oral or written explanations of officials and private citizens;

to demand documents and other information necessary for making inspections of the observance of the antimonopoly legislation;

to enlist — having come to an agreement with the respective bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, enterprises and associations — their specialists, deputies of local Radas (local councils) for making inspections;

to draw statements of administrative violations;

to examine cases concerning violations of the antimonopoly legislation, applications and cases concerning economic concentration in accordance with distributed duties and to make decisions based on the results;

to examine cases concerning administrative violations and to impose administrative fines for violations of the antimonopoly legislation;

to represent the Committee and its territorial offices, having no special warrant, before a court of justice or a court of arbitration;

to empower officials of the Committee and those of its territorial offices to carry out the powers provided for by paragraphs two to six of part one of the present Article.

A State Commissioner, a Head of Territorial Office of the Antimonopoly Committee of Ukraine shall be responsible for:

the exact fulfilment of requirements of the legislation of Ukraine, shall be objective and unprejudiced during the implementation of his powers;

the sending of applications concerning violations of the antimonopoly legislation of Ukraine committed by officials to bodies of power, bodies of local self-government, bodies of administrative and economic government and control as well as to economic entities.

A Head of Territorial Office of the Antimonopoly Committee of Ukraine, a person who fulfils his duties shall have the rights provided for by paragraphs two to eight of part one of the present Article and shall have the right to represent the territorial office, having no special warrant, before a court of justice or a court of arbitration.

A Head of Territorial Office may empower Deputy Heads of Territorial Office to carry out the powers provided for by part three of the present Article. A Head of Territorial Office of the Antimonopoly Committee of Ukraine, a person who fulfils his duties may empower officials of the territorial office to carry out the powers provided for by paragraphs two to six of part one of the present Article.

A State Commissioner, a Head of Territorial Office may not be members of commissions, committees and other organs to be established by bodies of state power, bodies of local self-government, bodies of administrative and economic government and control unless the Antimonopoly Committee of Ukraine gives its consent.

Holding more than one office by the State Commissioners and the Heads of Territorial Offices of the Antimonopoly Committee of Ukraine (except for scientific, teaching and creative activities) and their performing entrepreneurial activities shall be prohibited.

#### ***Article 17. Independence of a State Commissioner of the Antimonopoly Committee of Ukraine***

A State Commissioner of the Antimonopoly Committee of Ukraine shall be independent in his exercising powers to control the observance of the antimonopoly legislation and during the examination of cases concerning its violations.

A State Commissioner of the Antimonopoly Committee of Ukraine shall make decisions independently within his powers.

The State Commissioners of the Committee shall make decisions at sittings of the Antimonopoly Committee of Ukraine and administrative boards, shall have equal rights and shall be guided exclusively by law.

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

A State Commissioner of the Antimonopoly Committee of Ukraine may be brought to disciplinary responsibility (except for dismissal) on a general basis in accordance with the procedure established by law.

A State Commissioner of the Antimonopoly Committee of Ukraine may be dismissed:  
through such a state of health that prevents him from further work;  
at his will;

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

A State Commissioner of the Antimonopoly Committee of Ukraine shall have the right to resign in accordance with the procedure defined by law.

### ***Chapter IV. LEGAL BASIS FOR THE IMPLEMENTATION OF THE POWERS OF THE ANTIMONOPOLY COMMITTEE OF UKRAINE***

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

The Antimonopoly Committee of Ukraine, observing the Constitution and laws of Ukraine, shall implement its powers irrespective of bodies of power, bodies of administrative and economic government and control, bodies of local self-government, their officials, economic entities, associations of private citizens or their bodies.

The interference of central and local bodies of state executive power, bodies of local self-government, their officials, associations of citizens and their representatives with activities of the Antimonopoly Committee of Ukraine and its territorial offices shall be prohibited.

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

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

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

The Antimonopoly Committee of Ukraine and its territorial offices shall interact with bodies of the mass media and public organisations in the sphere of forestalling violations of the antimonopoly legislation.

Bodies of power, bodies of local self-government, bodies of administrative and economic government and control shall be obliged to come to an agreement with the Antimonopoly Committee of Ukraine about such decisions that could lead to the limitation or distortion of competition on the relevant markets and shall be obliged to apply for the Committee's consent to the establishment, reorganisation and liquidation of economic entities, to the establishment of associations of enterprises, to the transformation of bodies of power, bodies of local self-government, bodies of administrative and economic government and control into associations in the cases provided for by the legislation concerning the Antimonopoly Committee of Ukraine.

***Article 21. Notifying of Violations of the Antimonopoly Legislation***

Bodies of state power, bodies of local self-government, bodies of administrative and economic government and control, their officials shall be obliged to notify the Antimonopoly Committee of Ukraine and its territorial offices of such pieces of information that could be indicative of violations of the antimonopoly legislation.

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

Requirements made by the State Commissioners and the Heads of Territorial Offices of the Antimonopoly Committee of Ukraine within their powers shall be binding and shall be fulfilled within periods defined by them unless legislation provides for otherwise.

The non-fulfilment of legitimate requirements made by a State Commissioner or a Head of Territorial Office of the Antimonopoly Committee of Ukraine shall entail responsibility provided for by legislation.

Documents, statistical information and other types of information necessary for exercising control over the observance of the antimonopoly legislation and for the examination of cases concerning its violations shall be given at the demand of a State Commissioner, a Head of Territorial Office of the Antimonopoly Committee of Ukraine free of charge.

The information which is received by a State Commissioner, a Head of Territorial Office of the Antimonopoly Committee of Ukraine and access to which is restricted by legislation shall be used by them in accordance with legislation.

***Article 23. Procedural Basis for Activities of the Antimonopoly Committee of Ukraine***

The activities with respect to the detection, prevention and termination of violations of the antimonopoly legislation shall be carried out by the Antimonopoly Committee of Ukraine, the

administrative boards, the State Commissioners and the Heads of Territorial Offices of the Committee with the observance of the procedural basis defined by legislative acts of Ukraine.

The procedure to be followed by the Antimonopoly Committee of Ukraine and its territorial offices during the examination of cases concerning violations of the antimonopoly legislation shall secure the observance of rights and legitimate interests of natural and legal persons as well as those of the state.

#### ***Article 24. Decisions of the Antimonopoly Committee of Ukraine***

The Antimonopoly Committee of Ukraine, the State Commissioners, the administrative boards and the Heads of Territorial Offices of the Committee, within their powers, shall make binding instructions and decisions.

The Antimonopoly Committee of Ukraine, the administrative boards, the State Commissioners and the Heads of Territorial Offices of the Committee shall make decisions concerning the compulsory split-up of monopoly formations and the imposition of fines for violations of the antimonopoly legislation.

The Antimonopoly Committee of Ukraine, using the mass media, shall publish its notifications about both made decisions and its activities.

#### ***Article 25. Applying to a Court of Justice or a Court of Arbitration***

The Antimonopoly Committee of Ukraine and the State Commissioners of the Committee in order to protect interests of the state, those of consumers and entrepreneurs in connection with violations of the antimonopoly legislation shall submit applications (acts) to a court of justice or an arbitration court, including applications (acts):

for the nullification of acts of bodies of power, bodies of administrative and economic government and control, bodies of local self-government and for their repealing such acts that restrict competition if they have not observed, within established periods, instructions made by the Antimonopoly Committee of Ukraine with respect to the repeal of unlawful acts, the termination of violations, etc.;

for the exaction of such fines and additional sums to be imposed for the tardy payment of initial fines that were not paid voluntarily;

for the termination, by economic entities, of violations of the antimonopoly legislation;

for the obligation to fulfil decisions of the Antimonopoly Committee of Ukraine;

based on other grounds provided for by law.

### ***Chapter V. OTHER MATTERS OF ACTIVITIES OF THE ANTIMONOPOLY COMMITTEE OF UKRAINE***

#### ***Article 26. Scientific and Methodical Support Given to Activities of the Antimonopoly Committee of Ukraine***

In order to prepare recommendations with respect to the organisation and activities of the Antimonopoly Committee of Ukraine, with respect to the methodology of and methods for exercising control over the observance of the antimonopoly legislation, with respect to working out proposals for its application and improvement and with respect to other matters, the Antimonopoly Committee of Ukraine shall establish advisory bodies, shall conduct technical, economic and scientific researches, shall involve experts and consultants, shall train personnel in accordance with special programs.

#### ***Article 27. Structure, the Maximum Staff Number, Positions, Terms of Paying Salaries and Terms of Providing Both Material and Other Types of Support***

The structure, the maximum staff number, positions of the Antimonopoly Committee of Ukraine and its territorial offices shall be approved by the Chairman of the Antimonopoly Committee of Ukraine within the expenditures provided for by the estimate of incomes and expenditures.

Paying a salary to, providing material support to, providing support in the sphere of everyday services to, rendering transport and medical services to and giving social guarantees to the Chairman of the Antimonopoly Committee of Ukraine shall be performed in accordance with the terms and procedure which are defined by legislation with respect to ministers; those to the First Deputy Chairman — with respect to first deputy ministers; those to the Deputy Chairmen and the State Commissioners — with respect to deputy ministers; those to other officials of the central office of the Antimonopoly Committee of Ukraine — with respect to the relevant categories of specialists of ministries; to the Head of the Territorial Office of the Antimonopoly Committee of Ukraine in the Autonomous Republic of the Crimea and to his deputies — with respect to the Deputy Chairman of the Council of Ministers and ministers of the Autonomous Republic of the Crimea respectively; to the Heads of Territorial Offices, the Heads of the Kyiv and Sevastopol City Territorial Offices of the Antimonopoly Committee of Ukraine — with respect to deputy chairmen of regional state administrations, Deputy Chairmen of the Kyiv and Sevastopol City State Administrations respectively; to the Deputy Chairmen of Regional Territorial Offices, to the Deputy Chairmen of the Kyiv and Sevastopol City Territorial Offices — with respect to heads of departments and independent divisions of regional state administrations and those of the Kyiv and Sevastopol City State Administrations respectively; to other officials of the territorial offices — with respect to specialists of ministries of the Autonomous Republic of the Crimea, those of departments and independent divisions of regional state administrations as well as those of the Kyiv and Sevastopol City State Administrations respectively.

In addition, salaries of the officials of the Antimonopoly Committee of Ukraine and its territorial offices whose official duties are directly associated with the fulfilment of the functions provided for by Article 2 of the Law of Ukraine "On the State Protection of Officials of Courts of Justice and Those of Law Protective Bodies" shall be established in the amount exceeding the relevant salaries of public servants by 30%.

Terms of paying salaries to officials of the Antimonopoly Committee of Ukraine and its territorial offices shall be established by the Cabinet of Ministers of Ukraine in accordance with law.

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

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

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

The financing of expenditures for the maintenance of the Antimonopoly Committee of Ukraine and its territorial offices shall be implemented by means of transferring finances of the general fund of the state budget by the Central Department of the State Treasury of Ukraine to their current budget accounts in accordance with a transfer normative. The amount of the transfer normative shall be established by the Supreme Rada (Parliament) of Ukraine during the approval of the state budget for the next year.

Finances received as a result of the payment of duties on the submission of applications for giving consent to the establishment, reorganisation, liquidation of economic entities and finances received as a result of the payment of fines imposed for violations of the antimonopoly legislation as well as additional fines imposed for the tardy payment of initial fines shall be included in incomes of the special fund of the state budget, shall be transferred to a special account, shall not be confiscated and shall be used, in accordance with their special purpose, for the financing of activities of the Antimonopoly Committee of Ukraine and its territorial offices in accordance with the procedure and within the limits which are defined by the law concerning the state budget.

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

The Antimonopoly Committee of Ukraine shall be provided with transport, material and technical means at the expense of the state budget of Ukraine in accordance with the procedure established by the Cabinet of Ministers of Ukraine.

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

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

Life and health of officials of the Antimonopoly Committee of Ukraine and its territorial offices whose official duties are directly associated with the fulfilment of the functions provided for by Article 2 of the Law of Ukraine "On the State Protection of Officials of Courts of Justice and Those of Law Protective Bodies" shall be a subject of compulsory state assurance to be made at the expense of finances of the state budget in the amount equal to the salary which corresponds to the last position of the relevant official and which would be paid for five years.

In the case where the mentioned persons, in connection with their fulfilment of official duties, are crippled, injured, contused, traumatised, taken ill or have other persistent damage done to their health, which prevent them from continuing professional activities, an assurance sum equal to the salary which corresponds to the last position of the relevant person and which would be paid for one to five years (depending on the degree of lost capacity for work) shall be paid to the person; in the case of the death of an official as a result of such physical or other damage done to his health that is associated with his fulfilment of official duties the assurance sum equal to the salary which corresponds to the last position of the official and which would be paid for five years shall be paid to the family of the official.

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

The procedure and terms of making compulsory state assurance and the list of positions being a subject of compulsory state assurance shall be defined by the Cabinet of Ministers of Ukraine.

**Article 29<sup>1</sup>. Social Guarantees Given to the Chairman, Deputy Chairmen and State Commissioners of the Antimonopoly Committee of Ukraine**

The Chairman of the Antimonopoly Committee of Ukraine, the Deputy Chairmen and the State Commissioners, after the expiration of the corresponding term of powers, shall be allowed to occupy the previous position, shall be allowed to resume studies; if it is impossible to occupy the previous position or to resume studies as a result of the liquidation of the enterprise, office or organisation, they shall be allowed to occupy an equivalent position at another enterprise, office or organisation or they shall be placed in the personnel reserve of the Antimonopoly Committee of Ukraine with respect to the positions which correspond to their professional level, with the rank of a public servant being taken into account. The average monthly salaries shall be paid to the former Chairman, the Deputy Chairmen and the State Commissioners of the Antimonopoly Committee of Ukraine for the period of their unemployment, but not longer than a year.

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

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

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

The State Commissioners, the Heads of Territorial Offices, executives of the Antimonopoly Committee of Ukraine and its territorial offices shall have an identification card. The statute of the

identification card of an official of the Antimonopoly Committee shall be approved by the President of Ukraine.

**L. Kravchuk**  
**President of Ukraine**

The city of Kyiv  
26 November 1993  
No 3659-XII



## *Law of Ukraine*

### **ON THE PROTECTION AGAINST UNFAIR COMPETITION**

This Law determines the legal principles of protection of economic entities (entrepreneurs) and consumers against unfair competition.

The Law is aimed at establishing, developing, and ensuring trade and other fair customs in competition in the course of entrepreneurial activities in conditions of market economy.

#### *Chapter I*

### **GENERAL PROVISIONS**

#### **Article 1. Unfair Competition**

Unfair competition shall be any acts performed in the course of competition running counter to the rules, trade and other fair customs in entrepreneurial activities.

In particular, the acts defined by Chapters 2-4 of this Law shall be unfair competition.

The terminology used for the purposes of this Law is defined by the Law of Ukraine "On Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities."

#### **Article 2. Application of the Law**

The Law shall be applied to relations involving economic entities (entrepreneurs), their associations, bodies of state power, citizens, legal persons and their associations not being economic entities (entrepreneurs) in conjunction with unfair competition, including acts made by them outside Ukraine, if these acts have negative effect on competition in its territory.

This Law shall not be applied to relations involving the said entities if the results of their acts becomes apparent only outside Ukraine, unless otherwise envisaged by an international treaty to which Ukraine is a party.

#### **Article 3. Legislation of Ukraine on the Protection Against Unfair Competition**

Relations associated with the protection against unfair competition shall be governed by this Law, the Law of Ukraine "On Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities," the Law of Ukraine "On the Antimonopoly Committee of Ukraine," the Law of Ukraine "On Foreign Economic Activities," and by other legislative acts issued on the basis of laws or resolutions of the Supreme Rada (Parliament) of Ukraine.

#### *Chapter II*

### **UNLAWFUL USE OF BUSINESS REPUTATION OF AN ECONOMIC ENTITY (ENTREPRENEUR)**

#### **Article 4. Unlawful Use of Another's Trademarks, Advertising Material, and Packing**

Unauthorised use of another's Christian and company names, trademarks, logos, advertising material, packing, titles of books, works of art, periodicals, place names of commodity origin economic entities (entrepreneurs) because of which there can be confusion with respect to activities of other economic entities (entrepreneurs) having the priority right to use them shall be qualified as unlawful.

Use of a natural person name in a company name shall not be qualified as unlawful if the person name is somehow made distinct, so as to rule out its confusion with the activities of other economic entity (entrepreneur).

### **Article 5. Unlawful Use of Products Made by Other Manufacturers**

Unlawful use of products made by other manufacturers shall be launching into economic circulation under one's name products belonging to a different manufacturer by changing or lifting that manufacturer name without permission from the authorised person.

### **Article 6. Copying of Outward Appearance of Products**

Copying of outward appearance of products shall be such making outwardly exact replicas of products belonging to other economic entities (entrepreneurs) and launching them into economic circulation without indicating the manufacturer of copies, that can be confusing with respect to the activities of other economic entities (entrepreneurs).

Copying of outward appearance of products or their parts shall not be qualified as unlawful if this copying is warranted by their purely functional use.

This Article shall not be applied to products being protected as objects of intellectual property.

### **Article 7. Comparative Advertising**

Comparative advertising shall be such advertising that includes comparison with products, work, and services or activities of different economic entities (entrepreneurs).

Comparative advertising shall not be considered unlawful if information contained therein, pertaining to products, work or services, is corroborated by factual data, being authentic, unbiased, and useful for giving information to consumers.

## **Chapter III**

### **OBSTRUCTING BUSINESS OF OTHER ECONOMIC ENTITIES (ENTREPRENEURS) IN THE COURSE OF COMPETITION AND GAINING UNLAWFUL ADVANTAGE IN COMPETITION**

#### **Article 8. Discrediting an Economic Entity (Entrepreneur)**

Discrediting an economic entity (entrepreneur) shall be understood as such spreading of any form of untruthful, inaccurate or incomplete information about the entity (entrepreneur) or its activities that has damaged or could damage its business reputation.

#### **Article 9. Sales and Purchase of Products, Carrying out Work, and Rendering Services with Compulsory Assortment**

Sales and purchase of products, carrying out work, and rendering services with compulsory assortment shall be sales and purchase of certain products, carrying out work, and rendering services on condition of sales and purchase of other products, carrying out work, and rendering services that are not needed by the consumer or counterpart.

#### **Article 10. Instigating Boycott of an Economic Entity (Entrepreneur)**

Instigating boycott of economic entities (entrepreneurs) shall be acts of a competitor aimed at instigating a third party — directly or via a go-between — to refuse to make contractual links with the given economic entity (entrepreneur).

### ***Article 11. Instigating Suppliers to Discriminate Against Buyers (Customers)***

Instigating suppliers to discriminate against buyers (customers) shall be acts of a buyer (customer) competitor aimed at instigating — directly or via a go-between — the supplier to give the buyer (customer) competitor certain unjustifiable advantages over the buyer (customer).

### ***Article 12. Instigating an Economic Entity (Entrepreneur) to Abrogate Contract with a Competitor***

Instigating an economic entity (entrepreneur) to abrogate a contract with a competitor of another economic entity (entrepreneur) shall be understood as the instigation motivated by mercenary considerations or made in the interests of a third party, to make the given economic entity (entrepreneur) being a party to a contract to abrogate or mishandle this contract by giving this party to the contract — directly or via a go-between — a material reward, compensation or other advantages.

### ***Article 13. Bribing an Employee of a Supplier***

Bribing an employee of a supplier shall be the buyer (customer) competitor's giving or offering the employee — directly or via a go-between — material values, property or non-property benefits in return for that employee's improper fulfilment or non-fulfilment of his duty ensuing from or in conjunction with the contract between the supplier and the buyer, concerning delivery of products, carrying out work or rendering services, than has caused or could cause the competitor to get certain advantages over the buyer (customer).

Any other person having the authority to make decisions on behalf of a supplier on delivery of products, carrying out work or rendering services, and thus influence the supplier, or being otherwise linked with the supplier shall be placed on the same footing as that of an employee of the supplier.

### ***Article 14. Bribing an Employee of the Buyer (Customer)***

Bribing an employee of the buyer (customer) shall be understood as such the buyer (customer) competitor's offering the employee — directly or via a go-between — material values, property or non-property benefits in return for improper fulfilment of his duties ensuing from or in conjunction with the contract between the supplier and the buyer, concerning delivery of products, carrying out work or rendering services, that caused or could cause the competitor to receive advantages over the supplier.

Any other person having the authority to make decisions on behalf of a buyer on purchase of products, work or services, and thus influence the buyer, or being otherwise linked with the buyer shall be placed on the same footing as that of an employee of the buyer.

### ***Article 15. Gaining an Unlawful Advantage in Competition***

Gaining an unlawful advantage in competition shall be such gaining an advantage over another economic entity (entrepreneur) by violating the effective legislation affirmed by a decision made by a state body having the corresponding competence.

## ***Chapter IV***

### **UNLAWFUL COLLECTION, DISCLOSURE, AND USE OF COMMERCIAL SECRETS**

#### ***Article 16. Unlawful Collection of Commercial Secrets***

Unlawful collection of commercial secrets shall be considered as illegal obtaining the data qualified under the legislation of Ukraine as confidential commercial information if as a result of this an economic entity (entrepreneur) was or could be damaged.

### ***Article 17. Disclosure of Commercial Secrets***

Disclosure of commercial secrets shall be disclosure of the information qualified under the legislation of Ukraine as commercial secrets by the party entrusted with this information to a third party without the knowledge and consent of the authorised party if this information was entrusted to that party in due course or was made known in that party's line of duty and if this disclosure damaged or could damage the given economic entity (entrepreneur).

### ***Article 18. Instigation to Disclose Commercial Secrets***

Instigation to disclose commercial secrets shall be instigating a person duly entrusted with the information qualified under the legislation of Ukraine as commercial secrets or made privy to it in the line of duty to disclose the information if this disclosure damaged or could damage the given economic entity (entrepreneur).

### ***Article 19. Unlawful Use of Commercial Secrets***

Unlawful use of commercial secrets shall be such information used in production or taken into account when planning and doing entrepreneurial activities, that was illicitly obtained, without the knowledge and consent of the authorised person, and that is qualified as a commercial secret under the legislation of Ukraine.

## ***Chapter V***

### **RESPONSIBILITY FOR UNFAIR COMPETITION**

#### ***Article 20. Types of Responsibility***

Committing the acts defined by this Law as unfair competition shall be punished by fines which are envisaged by this Law and imposed by the Antimonopoly Committee of Ukraine, and it entails administrative, civil, and criminal responsibility in the cases envisaged by legislation.

#### ***Article 21. Imposition of Fines on Economic Entities Being Legal Persons and on Their Associations***

The acts of unfair competition, as envisaged by this Law, committed by economic entities, legal persons, and their associations shall entail fines imposed by the Antimonopoly Committee of Ukraine and its territorial offices in the amounts of up to three per cent of the economic entity proceeds from the sales of products, work, and services over the fiscal year preceding the year in which the fine was imposed.

If it is impossible to calculate such proceeds or if such proceeds are absent, the fines indicated in part one of this Article shall be imposed in amounts of up to five thousand untaxable minimum citizen incomes.

#### ***Article 22. Fines Imposed on Legal Persons, Their Associations and Citizen Associations not Being Legal Persons***

The acts of unfair competition, as envisaged by this Law, committed by legal persons, their associations, and by citizen associations not being legal persons shall entail fines imposed by the Antimonopoly Committee of Ukraine and its territorial offices in the amounts of up to two thousand untaxable minimum citizen incomes.

### **Article 23. Administrative Responsibility of Citizens**

The acts of unfair competition, as envisaged by this Law, committed by citizens engaged in entrepreneurial activities without forming legal persons, shall entail administrative responsibility according to legislation.

The acts of unfair competition, as envisaged by this Law, committed by citizens in the interests of a third party, these citizens not being engaged in entrepreneurial activities, shall entail administrative responsibility according to legislation.

### **Article 24. Restitution**

Damage caused by the acts qualified by this Law as unfair competition shall be indemnified according to claims of the interested persons in keeping with the procedure established by the civil legislation of Ukraine.

### **Article 25. Confiscation of Unlawfully Labelled Products and Duplicated Products Originating from a Different Economic Entity (Entrepreneur)**

On establishing unlawful use of others' trademarks, advertising material, and packing, as envisaged by Article 4 of this Law, or on discovering the fact of duplicating products envisaged by Article 6 of this Law, the interested persons may bring the issue before the Antimonopoly Committee of Ukraine or any of its territorial offices, requesting confiscation of unlawfully labelled products or duplicated products originally made by a different economic entity (entrepreneur) from both the manufacturer and seller.

Products thus confiscated shall be used in keeping with the procedures determined by the Cabinet of Ministers of Ukraine.

Unlawfully labelled products or duplicated products originally made by a different economic entity (entrepreneur) shall be confiscated when there is no other way to prevent mistaken identity damaging that other entity's business.

### **Article 26. Refutation of Untruthful, Inaccurate or Incomplete Data**

On discovering that an economic entity (entrepreneur) was discredited, the Antimonopoly Committee of Ukraine, its territorial offices shall have the right to take a decision on official retraction, by the guilty party and at the expense of the party, of such untruthful, inaccurate or incomplete information, within the period and in the manner determined by legislation or by the decision.

## **Chapter VI**

### **LEGAL PRINCIPLES OF THE PROTECTION AGAINST UNFAIR COMPETITION**

#### **Article 27. Procedural Principles of Handling Unfair Competition Cases by the Antimonopoly Committee of Ukraine and Its Territorial Offices**

Unfair competition cases shall be considered by the Antimonopoly Committee of Ukraine and its territorial offices in keeping with the procedures established by this Law, the Law of Ukraine "On Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities," the Law of Ukraine "On the Antimonopoly Committee of Ukraine," and other legislative acts of Ukraine.

#### **Article 28. Period of a Statement of Claim**

Persons whose rights are upset by the acts defined by this Law as unfair competition may, within six months from the date on which they discovered or had to discover these transgressions, shall address the Antimonopoly Committee of Ukraine and/or its territorial offices with statements of claim.

Expire of the period of a statement of claim shall warrant rejection of such a statements.

If the Antimonopoly Committee of Ukraine, its territorial offices find that this period was surpassed due to valid reasons, the statement of claim shall be accepted.

**Article 29. Means of Securing the Implementation of Decisions Made  
by the Antimonopoly Committee of Ukraine and Its Territorial Offices**

When handling a case according to a statement of claim, the Antimonopoly Committee of Ukraine and its territorial offices shall have the right to take measures to secure the implementation of their decisions if in the absence of such measures their implementation will be difficult or impossible.

In order to secure the implementation of such decisions, the Antimonopoly Committee of Ukraine and its territorial offices shall issue orders on:

— forbidding a person (respondent) to perform certain acts if there are signs of transgression in that person's conduct;

— seizing property or sums in the respondent's possession.

Such orders may be appealed to a court of law or an arbitration court in keeping with the procedures set forth by Article 32 of this Law, within fifteen days from the date of receipt of a copy of the decision.

A respondent, if the case is closed for lack of evidence, may, in keeping with the procedures set forth by laws of Ukraine, exact from the claimant damage in the amount of losses inflicted on the respondent when securing the implementation of the decision.

**Article 30. Decisions Made by the Antimonopoly Committee of Ukraine  
and Its Territorial Offices**

The Antimonopoly Committee of Ukraine and its territorial offices, when handling unfair competition cases, shall make binding decisions on:

— recognising the fact of unfair competition;

— terminating unfair competition;

— ordering official retraction of untruthful, inaccurate information, to be made by the guilty party at its own cost;

— imposing fines;

— confiscating unlawfully labelled products or duplicated products originally made by a different economic entity (entrepreneur);

— annulling or overriding unlawful acts and abrogating contracts made by central or local bodies of state executive power and executive bodies of local self-government.

Decisions imposing fines in amounts surpassing four hundred untaxable minimum citizen incomes shall be the sole prerogative of the Antimonopoly Committee of Ukraine, each to be passed at its sitting.

Decisions on confiscation of unlawfully labelled products or duplicated products originally made by different economic entities (entrepreneurs) shall be complied with in keeping with the procedures followed when implementing court rulings.

**Article 31. Implementation Procedures for Decisions on Fines**

A transgressor on whom a fine is imposed shall pay it within thirty days from the date of receipt of the ruling on the fine, unless otherwise instructed by the ruling.

Each day in default shall entail an additional fine in the amount of one per cent of the sum of the fine.

In case of refusal to pay a fine, the Antimonopoly Committee, its territorial offices shall recover the fine in an indisputable mode.

Fines collected shall be distributed as follows: fifty per cent shall be transferred to the state budget of Ukraine, twenty-five per cent to the budget of the Autonomous Republic of the Crimea and to local budgets, and twenty-five per cent to the state body imposing the fine, to help create scientific, material, technical, and data base on which to develop and protect competition.

**Article 32. Contesting Decisions of the Antimonopoly Committee of Ukraine  
and Its Territorial Offices**

Decisions made by the Antimonopoly Committee of Ukraine and its territorial offices with respect to cases on unfair competition shall be appealed, within thirty days from the date of receipt of a copy of the court ruling, to the Supreme Court of the Autonomous Republic of the Crimea, as well as to regional courts, the city courts of Kyiv and Sevastopol, the Arbitration Court of the Autonomous Republic of the Crimea, regional arbitration courts of Kyiv and Sevastopol.

**Article 33. Rules of Professional Ethics**

Economic entities (entrepreneurs), assisted by the Chamber of Commerce and Industry of Ukraine and other interested organisations, may develop rules of professional ethics to be adhered to in competition in corresponding entrepreneurial activities, as well as in certain branches of the economy. The rules of professional ethics in competition, developed by economic entities (entrepreneurs), shall be agreed with the Antimonopoly Committee of Ukraine.

The rules of professional ethics in competition may be used during conclusions of contracts, elaboration of establishing and other documents of economic entities (entrepreneurs).

**L. Kuchma**  
**President of Ukraine**

The city of Kyiv  
7 June 1996  
No 236/96-BP



## *Law of Ukraine*

### **ON NATURAL MONOPOLIES**

*(As of 31 October 2000)*

The present Law shall define legal, economic and organisation grounds for the state regulation of activities of economic entities being subjects of natural monopolies in Ukraine.

Securing the effective functioning of markets being in the state of natural monopoly on the basis of balancing interests of the society, economic entities being subjects of natural monopolies and consumers of their products shall be the purpose of the present Law.

#### **Section I. GENERAL PROVISIONS**

##### **Article 1. Terms Defined**

1. The following terms shall be used in the present Law in the following meanings:

*natural monopoly* — denotes such a state of a product market that ensures satisfying the demand more effectively under conditions where there is no competition as a result of the technological peculiarities of production (in connection with the essential decrease in expenses of production per product when volumes of production are being increased), and where other products (services), in the course of consumption, cannot substitute for the products (services) to be produced by subjects of natural monopolies, which makes the demand on the product market less dependable on changes in prices of the products (services) in comparison with the demand for other products (services) (hereinafter referred to as "products");

*consumer of products produced by subjects of natural monopolies* — denotes a natural or legal person which purchases the product produced (sold) by subjects of natural monopolies;

*subject of a natural monopoly* — denotes such an economic entity (legal person) of any form of ownership (monopoly formation) that produces (sells) products on a market which is in the state of a natural monopoly;

*adjacent market* — denotes a product market which is not in the state of a natural monopoly and with respect to whose subjects the sale of produced products or the use of products of other economic entities is impossible without the direct use of products produced (sold) by subjects of natural monopolies.

2. The terms "economic entity," "competition," "monopoly formation," "market of a product (product market)," "product" shall be used in such relevant meanings that are defined by the Law of Ukraine "On the Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities."

##### **Article 2. Scope of the Law**

1. The application of the present Law shall be spread to relations which come into being both on such product markets of Ukraine that are in the state of a natural monopoly and on adjoining markets where subjects of natural monopolies take place.

The regulation of activities of subjects of natural monopolies which is provided for by the present Law shall not be applied in spheres which are not considered to be natural monopolies unless laws of Ukraine establish otherwise.

2. Legislation concerning natural monopolies may establish the peculiarities of the regulation of activities to be performed by subjects of natural monopolies on certain product markets.

##### **Article 3. Legislation of Ukraine Concerning Natural Monopolies**

1. The legislation of Ukraine concerning natural monopolies shall consist of the present Law, the Air Code of Ukraine, the Code of Trade Seafaring of Ukraine, the Laws of Ukraine "On the Limitation of

Monopolism and Banning of Unfair Competition in Entrepreneurial Activities," "On the Antimonopoly Committee of Ukraine," "On Transport," "On Communication," "On Pipeline Transport," "On Rail Transport," "On the Protection Against Unfair Competition," "On the Electric Power Industry" and other laws of Ukraine which establish the peculiarities of performing entrepreneurial activities in the sphere of natural monopolies.

2. If an international treaty whose binding nature is acknowledged by the Supreme Rada (Parliament) of Ukraine establishes such rules that are not contained by the present Law, the rules of the international treaty shall be applied.

## ***Section II. STATE REGULATION OF NATURAL MONOPOLIES***

### ***Article 4. Bodies which Regulate Activities of Subjects of Natural Monopolies***

1. The regulation of activities of subjects of natural monopolies in the spheres defined in Article 5 of the present Law shall be performed by such national commissions on the regulation of natural monopolies that are established and function in accordance with the present Law.

In the cases established by law, the regulation of activities of subjects of natural monopolies may be performed by bodies of executive power and bodies of local self-government.

If activities of subjects of natural monopolies which are to be regulated in accordance with the present Law and are directed towards satisfying demands of a separate region, such functions to regulate activities of subjects of natural monopolies that are defined by the present Law may be delegated, in accordance with established procedure, to the Council of Ministers of the Autonomous Republic of the Crimea, to regional state administrations, to the Kyiv and Sevastopol City Administrations, with the powers provided for by Article 14 of the present Law being given.

2. State control over the observance of the antimonopoly legislation in the sphere of natural monopolies shall be exercised by the Antimonopoly Committee of Ukraine in accordance with its competence.

3. Public control over activities of subjects of natural monopolies shall be exercised by associations of consumers in accordance with procedure established by legislation.

Bodies which regulate activities of subjects of natural monopolies shall facilitate exercising public control over activities of subjects of natural monopolies by associations of consumers.

### ***Article 5. Spheres of Activities of Subjects of Natural Monopolies***

1. Activities of subjects of natural monopolies shall be regulated in accordance with the present Law in the following spheres:

the transport of oil and oil products by pipelines;

the transport of natural and oil gas by pipelines and its distribution;

the transport of other substances by pipelines;

the transfer and distribution of electric power;

the use of tracks, controller's services, stations and other units of the infrastructure which ensure the movement of rail transport of general use;

control of air traffic;

communication of general use;

central water supply and sewerage;

central supply of thermal energy;

specialised services to be rendered by transport terminals, ports, airports in accordance with the list which is defined by the Cabinet of Ministers of Ukraine.

2. The list of subjects of natural monopolies shall be compiled and kept by the Antimonopoly Committee of Ukraine in accordance with its powers.

### ***Article 6. Adjacent Markets***

The adjacent markets which are regulated in accordance with the present Law shall comprise: markets of natural gas and other substances to be transported by pipelines;

markets of the preservation of natural gas in such quantities that exceed a level to be established by conditions and rules which regulate entrepreneurial activities in the sphere of preserving natural gas (by licence agreements);

markets of domestic and international transport of passengers and freights by rail, air, river and sea transport;

markets of the production of electric power in such quantities that exceed a level to be established by conditions and rules which regulate entrepreneurial activities in the sphere of producing electric energy (by licence agreements);

markets of the supply of electric power;

markets of the production of thermal power (with the exception of cases where that sort of power is used exclusively to satisfy internal production needs) in such quantities that exceed a level to be established by conditions and rules which regulate entrepreneurial activities in the sphere of producing thermal power (by licence agreements);

markets services to be rendered in the sphere of interurban and international telephone communication.

#### **Article 7. Licensing Activities to be Performed in the Spheres of Natural Monopolies and on the Adjacent Markets**

Activities of subjects of natural monopolies in the spheres defined by Article 5 of the present Law and activities of economic entities on the adjacent markets shall be licensed in accordance with law.

#### **Article 8. Matters to be Regulated in Activities of Subjects of Natural Monopolies**

Matters to be regulated in activities of subjects of natural monopolies in accordance with the present Law shall be the following:

prices (tariffs) of products produced (sold) by subjects of natural monopolies;

the access of consumers to products produced (sold) by subjects of natural monopolies;

other conditions of performing entrepreneurial activities in the cases provided for by legislation.

#### **Article 9. Principles of the Regulation of Activities to be Performed by Subjects of Natural Monopolies**

1. The regulation of activities to be performed by subjects of natural monopolies shall be applied on the basis of the following principles:

the publicity and openness of regulation procedures;

the addressness of regulation, its direction towards a specific subject of a natural monopoly; the self-repayment of subjects of natural monopolies;

the stimulation of raising the quality of products and the satisfaction of a demand for them; the protection of consumer rights.

2. The following shall be taken into account during the regulation of prices (tariffs) to be established by subjects of natural monopolies for their products:

expenditures which in accordance with laws concerning taxes are considered to be a part of gross expenditures associated with production and circulation;

taxes and duties (binding payments) transferred to budgets and state funds of special purpose;

the cost of basic production facilities, depreciation deductions, needs for investments necessary for the restoration of basic production facilities;

expected income ensuing from the possible sale of products at different prices (tariffs);

the remoteness of different groups of consumers from the place where products are produced;

the correspondence between the quality of produced (sold) products and consumer needs;

state donations and other forms of state support.

3. Bodies which regulate activities of subjects of natural monopolies, when taking decisions with respect to that sort of regulation, shall take into account such information about activities of the subject of the

natural monopoly that is submitted by associations of consumers, subjects of natural monopolies, other interested persons.

### **Article 10. Duties of Subjects of Natural Monopolies**

1. Subjects of natural monopolies shall be obliged:
  - to observe the established procedure of pricing, standards and indications of the security and quality of a product and other conditions and rules of entrepreneurial activities which are defined by licences to perform entrepreneurial activities in the sphere of natural monopolies and on the adjacent markets;
  - to keep a separate accounting in accordance with every type of activities to be licensed;
  - to ensure, on the basis of non-discriminatory conditions, the sale of products produced by them to consumers and not to pose obstacles to the implementation of agreements to be concluded between producers which perform activities on the adjacent markets and consumers;
  - to submit, to bodies which regulate their activities, such documents and information, to the extent and within periods established by the relevant bodies, that are necessary for exercising powers by the bodies;
  - to ensure that officials of bodies which regulate their activities have access to such documents and information that are necessary for exercising powers by the bodies as well as to units, facilities and plots which are owned or used by them.
2. Subjects of natural monopolies shall not perform such acts that result or could result in the impossibility to produce (sell) products with respect to which regulation is performed in accordance with the present Law or that result or can result in the substitution of other products which are not similar from the point of view of their consumer characteristics for products with respect to which regulation is performed.

### **Section III. NATIONAL COMMISSIONS ON THE REGULATION OF NATURAL MONOPOLIES**

#### **Article 11. Establishment and Liquidation of National Commissions on the Regulation of Natural Monopolies**

1. National commissions on the regulation of natural monopolies (hereinafter referred to as "the commissions" shall be central bodies of executive power which have special status, which are established and liquidated by the President of Ukraine.
  - The commissions shall act on the basis of statutes to be approved by the President of Ukraine.
  - In order to exercise their powers, the commissions may establish and liquidate their territorial bodies which function on the basis of statutes to be approved by the commissions.
2. The commissions shall consist of the chairman of the commission and at least two members of the commission which are appointed and relieved of their posts by the President of Ukraine on the basis of proposals to be submitted by the Prime Minister of Ukraine.
3. The term of office of chairmen and members of the commissions shall be six years, with the periodic rotation of the staff being ensured. The procedure of the rotation of chairmen and members of the commissions shall be established by statutes of the commissions.
  - The same person shall not be a member of a commission for more than two periods in succession.
4. Powers of the chairman and members of the commission shall be terminated before the established time:
  - if an application for resignation is submitted;
  - if a criminal sentence comes into force;
  - if a flagrant violation of official duties is committed;
  - if it is impossible for them to fulfil their duties owing to the state of health;
  - if an application for retirement is submitted.
5. Organisation, technical and other types of work with respect to the maintenance of activities of the commissions shall be done by their staff in accordance with statutes of the commissions.
6. The legal status of public servants shall be applied to both members and staff of the commissions.
7. The commissions shall be liquidated in accordance with established procedure if it is possible for competition to develop on the relevant market.



### **Article 12. Tasks of the Commissions**

The basic tasks of the commissions shall be as follows:

to regulate activities of subjects of natural monopolies;

to facilitate, first, the creation of such conditions that ensure, due to the formation and development of competition, the withdrawal of a product market from the state of a natural monopoly, which will make it possible to satisfy demand more effectively and to facilitate, second, the development of competition on the adjacent markets;

to formulate price policy in the relevant sphere of regulation;

to facilitate the effective functioning of product markets on the basis of balancing interests of the society, subjects of natural monopolies and consumers of products which are produced (sold) by the subjects of natural monopolies.

### **Article 13. Functions of the Commissions**

The commissions, in accordance with their tasks, shall:

work out and approve special conditions and rules concerning entrepreneurial activities to be performed by subjects of natural monopolies and by such economic entities that perform activities on the adjacent markets, shall exercise control over their observance, shall take measures, in accordance with established procedure, to forestall violations of the conditions and rules;

issue, in accordance with established procedure, licences to perform the relevant entrepreneurial activities to subjects of natural monopolies and to such economic entities that perform activities on the adjacent markets;

formulate price policy in the relevant spheres of natural monopolies, shall define conditions concerning the access of consumers to products to be produced by subjects of natural monopolies;

submit, to the relevant state bodies, proposals with respect to the conclusion of state contracts, the elaboration of standards and indications of the quality of products and services and with respect to the regulation of investment processes in the spheres of natural monopolies;

compile and keep registers of subjects of natural monopolies whose activities are regulated in accordance with the present Law;

take part in the elaboration of and shall submit, according to the established procedure, proposals to improve the legislation concerning natural monopolies;

inform the public, using the mass media, about their activities and activities of subjects of natural monopolies;

publish annual reports about the results of their activities and activities of subjects of natural monopolies;

submit materials concerning violations of the effective legislation to the relevant state bodies;

fulfil other functions which ensue from the above tasks.

### **Article 14. Powers of the Commissions**

The commissions shall have the right:

to receive such documents, statistical and other types of information about activities of subjects of natural monopolies that are necessary for their fulfilling the above functions;

to make such decisions, within their competence and in accordance with procedure to be established by statutes of the commissions, that are binding on subjects of natural monopolies;

to make decisions to impose fines on subjects of natural monopolies in the cases provided for by the present Law;

to draw, in accordance with the Administrative Violations Code of Ukraine, statements of violations of the legislation concerning natural monopolies which are committed by officials of subjects of natural monopolies;

to apply, in accordance with procedure established by law, the relevant sanctions to subjects of natural monopolies and to economic entities which perform activities on the adjacent markets for their violation of conditions and rules of performing entrepreneurial activities in the spheres of natural monopolies and on the adjacent markets (licence conditions);

to adopt normative acts concerning matters being within their competence and shall exercise control over the fulfilment of that sort of acts;

to establish, with respect to subjects of natural monopolies and in accordance with procedure to be defined by the commissions, requirements concerning their performing such entrepreneurial activities that are not within the sphere of natural monopolies if that sort of activities have an impact on the market which is in the state of a natural monopoly;

to submit the relevant applications to a court of justice (court of arbitration) if norms of the present Law are violated by subjects of natural monopolies and economic entities which perform activities on the adjacent markets.

#### **Article 15. Decisions of the Commissions**

1. Decisions of the commissions shall be made during sessions which are held in the form of closed or public hearings. If it is necessary to examine matters of great public importance, sittings shall be held in the form of public hearings in which representatives of subjects of natural monopolies, those of economic entities which perform activities on the adjacent markets, those of associations of consumers and those of the public take part.

The observance of rights and legitimate interests of private citizens, entrepreneurs and the society shall be ensured in the course of making decisions.

The commissions' decisions shall be fulfilled within periods to be defined by them.

Such decisions made with respect to cases associated with violations of the legislation concerning natural monopolies that have an impact on public interests shall be published in the mass media within a month from the date when they are made.

Influence exerted in any form on a member of a commission or on any official of its staff for the purpose of either impeding his fulfilling official duties or his making an unlawful decision shall entail the responsibility provided for by the legislation of Ukraine.

2. Subjects of natural monopolies, economic entities which perform entrepreneurial activities on the adjacent markets, associations of consumers and other interested persons, if they do not consent to a decision taken by a commission, shall have the right to appeal against the decision in legal form within a month from the date when a copy of the decision is received.

Appealing against the commissions' decisions in legal form shall not suspend their implementation.

A court of justice (court of arbitration), on the basis of a request submitted by the persons defined in paragraph one of the present part or on its own initiative, may suspend the implementation of the commissions' decisions for the period of examining the case at the court of justice.

The commissions' decisions concerning the imposition of fines on subjects of natural monopolies shall be implemented in accordance with the procedure provided for by Article 17 of the present Law.

#### **Article 16. Financing of the Commissions' Activities**

The financing of activities of the commissions and their territorial bodies shall be performed at the expense of the state budget of Ukraine.

### **Section IV. RESPONSIBILITY OF SUBJECTS OF NATURAL MONOPOLIES, THEIR OFFICIAL AND BODIES WHICH REGULATE THEIR ACTIVITIES**

#### **Article 17. Imposition of Fines on Subjects on Natural Monopolies**

1. The national commissions on the regulation of activities of subjects of natural monopolies shall impose fines on subjects of natural monopolies:

for the tardy submission of information to bodies which regulate activities of subjects of natural monopolies — in the amount of 200 tax-deductible minimal citizen incomes;

for the non-submission of information to bodies which regulate activities of subjects of natural monopolies or for the submission of deliberately false information to the bodies — in the amount of 1000 tax-deductible minimal citizen incomes;

for the non-fulfilment or tardy fulfilment of decisions made by bodies which regulate activities of subjects of natural monopolies, for violations of conditions and rules of performing entrepreneurial activities in the spheres of natural monopolies and on the adjacent markets (licence conditions) — in the amount of 5000 tax-deductible minimal citizen incomes.

2. Fines imposed on subjects of natural monopolies shall be transferred to the state budget of Ukraine.

3. If a fine is imposed on subjects of natural monopolies, they shall pay it within 30 days from the date when the decision concerning the imposition of the fine is received.

If a fine is not paid in proper time, an additional fine equal to 1% of the initial fine shall be imposed for every day of the delay.

If subjects of natural monopolies refuse to pay a fine, the fine shall be exacted in accordance with a decision to be made by a court of justice (court of arbitration).

#### **Article 18. Responsibility of Officials of Subjects of Natural Monopolies**

Officials of subjects of natural monopolies shall bear the administrative responsibility, in accordance with the procedure established by the Administrative Violations Code of Ukraine, for the non-fulfilment or tardy fulfilment of decisions made by bodies which regulate activities of subjects of natural monopolies, for the non-submission or tardy submission of information to the bodies or for the submission of deliberately false information to the bodies.

#### **Article 19. Confiscation of Unlawfully Got Profits, Receipts and the Reparation of Damage**

1. Profits got by subjects of natural monopolies as a result of violations of norms of the present Law shall be confiscated in legal form and transferred to the state budget of Ukraine.

Receipts got by subjects of natural monopolies as a result of violations of the level of prices (tariffs) to be established by bodies which regulate activities of natural monopolies shall be confiscated, in accordance with the legislation concerning prices and pricing, and transferred to the relevant budget.

2. Damage caused by either activities or inactivity of subjects of natural monopolies as a result of violations of norms of the present Law shall be repaired in accordance with procedure provided for by the legislation of Ukraine.

#### **Article 20. Responsibility of Both Bodies which Regulate Activities of Subjects of Natural Monopolies and Their Officials**

1. Damage caused as a result of making such unlawful decisions, such activities or inactivity of bodies which regulate activities of subjects of natural monopolies that violate norms of the present Law shall be repaired in accordance with procedure provided for by the civil legislation of Ukraine.

2. Officials of bodies which regulate activities of subjects of natural monopolies shall bear the responsibility defined by laws of Ukraine for the non-fulfilment or undue fulfilment of their official duties, in particular for the disclosure of information which is considered to be a commercial secret.

#### **Section V. FINAL PROVISIONS**

1. The present Law shall come into force from the date of its publication.

2. It shall be established that bodies which fulfil certain functions in regulating activities of subjects of natural monopolies are to continue to fulfil them until the establishment of national commissions on the regulation of natural monopolies.

3. It shall be ordered to the Cabinet of Ministers of Ukraine, within 2 months from the date when the Law of Ukraine "On Natural Monopolies" comes into force:

to submit, to the Supreme Rada (Parliament) of Ukraine, its proposals with respect to bringing legislative acts of Ukraine in conformity with the present Law;

to bring normative and legal acts of the Cabinet of Ministers of Ukraine in conformity with the present Law;  
to ensure the revision and repeal, by ministries and other central bodies of executive power of Ukraine, of their normative and legal acts which contradict the present Law;  
to work out normative and legal acts provided for by the present Law.

**L. Kuchma**  
**President of Ukraine**

The city of Kyiv  
20 April 2000  
No 1682-III



THE END OF THE MESSAGE