

**APPROVED
Order of the
Antimonopoly Committee
of Ukraine
11.12.2008 N 880-p**

**Registered at the
Ministry of Justice
of Ukraine
on 24 January 2009
under N 74/16090**

**TYPICAL REQUIREMENTS
for concerted actions of undertakings on specialisation of production, compliance with
which allows to carry out these concerted actions without the permission of the
Antimonopoly Committee of Ukraine**

1. General provisions

1. These Typical Requirements have been developed in accordance with Article 11 of the Law of Ukraine "On Protection of Economic Competition" (2210-14) (hereinafter - the Law) and define the requirements for horizontal concerted actions of undertakings on specialisation of production (hereinafter - concerted actions on specialisation), in case of compliance with which concerted actions are permitted and do not require obtaining permission of the Antimonopoly Committee of Ukraine in accordance with part one of Article 10 of the Law.

2. These Typical Requirements shall be applied in case of concerted actions of undertakings on specialisation that do not fall under the exemption in accordance with the provisions of Chapter 2 of the Typical Requirements for Concerted Actions of Undertakings for General Exemption from Preliminary Obtaining of Permission of the Antimonopoly Committee of Ukraine for Concerted Actions of Undertakings, approved by the Order of the Antimonopoly Committee of Ukraine as of 12.02.2002 N 27-p (z0239-02), registered at the Ministry of Justice of Ukraine on 07.03.2002 under N 239/6527.

3. Concerted actions on specialisation are horizontal concerted actions of undertakings that provide for concentration of efforts and resources of their individual participants in the production (sale) of certain goods, as a result of which they contribute to the improvement (rationalisation) of production, purchase or sale of goods, and are therefore permitted in accordance with part one of Article 10 of the Law of Ukraine "On Protection of Economic Competition" (2210-14), if the conditions for such actions do not lead to a significant restriction of competition in the entire market or in a significant part of it.

4. The procedure for calculating the indicators of participants of concerted actions, undertakings that include participants of concerted actions used in these Typical Requirements, as well as its specifics in relation to certain categories of undertakings, is established by the Regulation on the Procedure for Submitting Applications to the Bodies of the Antimonopoly Committee of Ukraine for Granting Permission for Concerted Actions of Undertakings (Regulation on Concerted Actions), approved by the Order of the Antimonopoly Committee of Ukraine as of 12.02.2002 No. 26-p (z0238-02), registered at the Ministry of Justice of Ukraine on 07.03.2002 under No. 238/6526, and clauses 4.2 - 4.3 of Chapter 4 of the Typical Requirements for Concerted Actions of Undertakings for General Exemption from Preliminary Obtaining of Permission of the Antimonopoly Committee of Ukraine for Concerted Actions of Undertakings, approved by the Order of the Antimonopoly Committee of Ukraine as of 12.02.2002 No. 27-p (z0239-02), registered at the Ministry of Justice of Ukraine on 07.03.2002 under No. 239/6527.

The monopoly (dominant) position of an undertaking is determined in accordance with the Methodology for Determining the Monopoly (Dominant) Position of Undertakings in the Market, approved by the Order of the Antimonopoly Committee of Ukraine as of 05.03.2002 No. 49-p (z0317-02), registered at the Ministry of Justice of Ukraine on 01.04.2002 under No. 317/6605.

5. The provisions of these Typical Requirements do not limit the right of participants of concerted actions to apply to the Antimonopoly Committee of Ukraine for permission to take the relevant actions in accordance with Article 10 of the Law of Ukraine "On Protection of Economic Competition" (2210-14).

2. Typical requirements

1. The concerted actions of undertakings on specialisation, i.e. concerted actions in the course of which the participants do not undertake any other obligations than the following, are permitted and do not require the permission of the Antimonopoly Committee of Ukraine to cease all or part of the production of certain identical or similar goods or to refrain from producing such goods;

on a mutual basis, to cease production or refrain from production of certain but different goods;

produce certain goods only jointly;

not to take concerted actions on specialisation with third parties in relation to the same or similar goods in the same product market;

not to supply goods that are the subject of a specialisation agreement to undertakings that are not parties to concerted actions on specialisation and compete with them on the market of the said goods;

not to purchase goods that are the subject of a specialisation agreement from undertakings that are not parties to concerted actions on specialisation and compete with them on the market of the said goods;

to sell the goods that are the subject of the specialisation agreement only jointly or through a jointly determined distributor;

supply the other parties to the specialisation agreement with goods that are the subject of this agreement that meet the minimum quality requirements;

to maintain minimum stocks of goods that are the subject of the specialisation agreement and spare parts for them;

provide customer support services and guarantee services for the goods that are the subject of the specialisation agreement.

2. The provisions of clause 1 of this chapter shall not apply to concerted actions of undertakings if at least one of the following conditions is met:

2.1. Any undertaking, which includes a participant of concerted actions, holds a monopoly (dominant) position in any affected market.

2.2. The aggregate share of undertakings comprising the parties to the concerted actions in any affected market exceeds 25 per cent.

2.3. On any affected commodity market:

the aggregate share of the undertakings comprising the concerted actions together with the shares of no more than two other undertakings holding the largest shares in the affected market exceeds 50 per cent;

the aggregate share of undertakings comprising the parties to the concerted actions, together with the shares of no more than four other undertakings holding the largest shares in the affected market, exceeds 70 per cent.

At the same time, the smallest market share held by the undertakings referred to in indents two and three of this sub-clause shall exceed 10 per cent.

2.4. Concerted actions lead or may lead to:

coordinated fixing of prices (tariffs, rates) at which these goods are sold to third parties or purchased from third parties, except for the cases specified in clause 3 of this chapter;

limitation of volumes of production, sale of goods to third parties or purchase of goods from third parties, except for the cases specified in clause 3 of this chapter;

division of markets, in particular, by territorial principle, assortment of goods, volume of their sale or purchase, by the circle of sellers, buyers or consumers.

2.5. Concerted actions on specialisation of production on the basis of respective specialisation agreements, the term of validity of which exceeds five years.

3. The permission provided for in clause 1 of this chapter shall apply to concerted actions involving the fixing of selling prices for the goods being the subject of specialisation to a jointly determined distributor and/or limitation of the volume of sales of the goods being the subject of specialisation to a jointly determined distributor, if this does not and cannot lead to a reduction in the volume of production or sale of goods to other buyers.

4. If the aggregate share of the participants in the concerted actions in any market involved did not initially exceed 25 per cent, and subsequently exceeded it, the concerted actions covered by the permit provided for in clause 1 of this chapter of these Typical Requirements are permitted and do not require the consent of the Antimonopoly Committee of Ukraine for one year after the year in which the share of 25 per cent was exceeded for the first time.

5. If the conditions specified in sub-clause 2.3 of clause 2 of this chapter were absent and subsequently the specified indicators were exceeded, the concerted actions covered by the permit provided for in clause 1 of this chapter of these Typical Requirements are permitted and do not require the consent of the Antimonopoly Committee of Ukraine within one year after the year in which these conditions were exceeded for the first time.