

**APPROVED
Order of the
Antimonopoly Committee
of Ukraine
June 13, 2019 № 10-пн**

**Registered at the Ministry of
Justice of Ukraine
on July 11, 2019
under № 773/33744**

**TYPICAL REQUIREMENTS
for concerted actions of small and medium-sized entrepreneurs regarding joint
procurement of goods**

I. General provisions

1. These Typical requirements, developed in accordance with the provisions of Article 7 and Article 11 of the Law of Ukraine "On Protection of Economic Competition" (hereinafter - the Law), define the requirements for concerted actions of small and medium-sized entrepreneurs regarding joint procurement of goods. If the concerted actions of undertakings comply with these Typical requirements, such actions are permitted and do not require permission from the Antimonopoly Committee of Ukraine (hereinafter - the Committee) in accordance with part one of Article 10 of the Law.

2. The term "homogeneous goods" refers to identical (standardized) goods (products, works, services) and/or goods that are not identical but have similar characteristics and consist of similar components, thereby performing the same functions and being interchangeable from the perspective of satisfying consumer needs.

The terms "small and medium-sized entrepreneur", "undertaking", "product market", "goods" are used in the meanings defined in Article 1 of the Law.

The term "concerted actions of undertakings" is used in the meaning defined in Article 5 of the Law.

II. Permitted concerted actions

1. Voluntary concerted actions of small and medium-sized entrepreneurs regarding joint procurement of goods are permitted and do not require permission from the Antimonopoly Committee of Ukraine in accordance with part one of Article 10 of the Law, provided that they meet the following conditions:

if the combined market share of the participants in the concerted actions as buyers of the goods, regarding the procurement of which the concerted actions are carried out, as well as sellers of such goods, does not exceed 20 percent, or

if the combined market share of the participants in the concerted actions as buyers of the goods, regarding the procurement of which the concerted actions are carried out, as well as

sellers of such goods, does not exceed 35 percent, provided that the commodity market contains a seller whose market share exceeds 35 percent.

For the purposes of applying these Typical requirements:

in the market for homogeneous goods, the market share of the buyer is calculated based on data on the volume of purchases in physical terms, and the market share of the seller is calculated based on data on the volume of sales in physical terms;

in the market for non-homogeneous goods, the market share of the buyer is calculated based on data on the value of purchases, and the market share of the seller is calculated based on data on the value of sales in monetary terms.

In the absence of direct data on the volume (value) of sales or the volume (value) of purchases, market shares of the relevant undertakings may be determined using estimates based on other market information, including the volume of sales and purchases in the market.

Market shares are calculated based on data for the calendar year preceding the year in which the calculation is made.

The seller's market share includes goods supplied to buyers connected to the supplier by the relations of control for the purpose of further resale.

2. If the combined share of buyers in the market where the procurement takes place did not exceed the thresholds specified in the second and third indents of clause 1 of this section at the start of the concerted actions but subsequently exceeded those thresholds, the provisions of the first indent of clause 1 of this section continue to apply to such concerted actions for one year following the year in which the market share threshold was exceeded for the first time.

If the seller's share in the market where the procurement takes place exceeded the threshold specified in the third indent of clause 1 of this section at the start of the concerted actions but subsequently fell below it, the provisions of the first indent of clause 1 of this section continue to apply to such concerted actions for one year following the year in which the market share threshold first fell below the specified level.

The extension of the provisions of the first indent of clause 1 of this section, provided for in the first and second indents of this clause, cannot be combined in such a way that the total term exceeds one calendar year.

III. Exceptions to permissible concerted actions of small and medium-sized entrepreneurs regarding joint procurement of goods

1. The provisions of clause 1 of Section II of these Model Requirements do not apply to concerted actions that, directly or indirectly, independently or in combination with other factors under the decisive influence of participants in the said actions, involve the following restrictions:

1) restricting the buyer's ability to independently determine the purchase price of goods, including the goods subject to joint procurement.

Such a restriction does not include the establishment of recommended purchase prices for goods if failure to comply with such recommended prices does not result in negative consequences from other participants in the concerted actions;

2) restricting any participant in the concerted actions regarding the procurement territory, range of purchases, procurement volumes, or the circle of sellers.

2. The provisions of clause 1 of Section II of these Typical requirements do not apply to concerted actions that directly or indirectly result in or may result in the distortion of the results of tenders, auctions, contests, or bidding.

IV. Non-application of the provisions of the Typical requirements

1. If unrelated concerted actions of small and medium-sized entrepreneurs regarding joint procurement of goods cover more than 50 percent of a particular market, the Antimonopoly Committee of Ukraine may, based on the request of market participants or on its own initiative, issue an order for the non-application of the provisions of clause 1 of Section II of these Typical requirements to concerted actions of small and medium-sized entrepreneurs regarding joint procurement of goods in the market as a whole or excluding concerted actions that were in place at the time such an order was issued.

2. The order of the Antimonopoly Committee of Ukraine referred to in clause 1 of this section must be published on the official website of the Antimonopoly Committee of Ukraine within 3 working days after adoption. If the order applies to concerted actions that were in place at the time of its adoption, it shall take effect no earlier than three months after its publication.