Unofficial translation

ANTIMONOPOLY COMMITTEE OF UKRAINE
ORDER

No. 49-p of March 5, 2002
Kyiv

Registered by the Ministry of Justice
of Ukraine under No. 317/6605
On April 1, 2002

On Approving the Methodology for Determining Monopoly (Dominant) Position of Economic Entities in the Market

1. Pursuant to Article 12 of the Law of Ukraine *On Protection of Economic Competition* (2210-14) and Paragraph 2 Article 8 of the Law of Ukraine *On Antimonopoly Committee of Ukraine* (3659-12), the following Methodology for Determining Monopoly (Dominant) Position of Economic Entities in the Market shall be approved.

2. The Methodology for Determining Monopoly Position of Entrepreneurs in the Market as approved by the Order of the Antimonopoly Committee of Ukraine No. 1-p (z0048-94) and registered by the Ministry of Justice of Ukraine on March 1994 under No. 48/257 shall be recognised as invalid.

Committee Chair O. Kostusiev

APPROVED by the
Order of the Antimonopoly Committee of Ukraine
No. 49-p of March 5, 2002
registered by the Ministry of Justice of Ukraine
on April 1, 2002 p.
under No. 317/6605

METHODOLOGY
for Determining Monopoly (Dominant) Position of Economic Entities in the Market

1. General Provisions

1.1. The Methodology for Determining Monopoly (Dominant) Position of Economic Entities in the Market (hereinafter - the Methodology) was developed in accordance with the Laws of Ukraine *On Protection of Economic Competition* (2210-14) and *On Antimonopoly Committee of Ukraine* (3659-12).

1.2. This Methodology describes the procedure for determining a monopoly (dominant) position of economic entities in the market and is developed for the purposes of analysing activities of economic entities, groups of economic entities and consumers related to production, sale and purchase of goods, provision of services, and performance of works in the national and regional markets.

Entities subject to identification of monopoly (dominant) position are:

economic entities;

groups of economic entities - several economic entities active on the market within specific commodity and territorial (geographic) boundaries;

circumstances that identify the conditions existing on a specific commodity market for exercising economic activities related to production, sale and purchase of goods, provision of services and performance of works, as well as the conditions for purchase and use of such goods, works and services.

1.3. The purpose of determining a monopoly (dominant) position of economic entities in the market is to receive necessary information for decision-making on development and protection of economic competition, in particular demonopolisation of economy, antimonopoly regulation, control of concerted actions, concentration; control of adherence to the legislation on protection of economic competition; protection of interests of economic entities, groups of economic entities and consumers from violations thereof.

In this Methodology, the following terms are used as defined below:

barriers for entering the market - circumstances that prevent new economic entities from engaging in competition on equal terms with those economic entities that are already functioning in a respective commodity market;

barriers for exiting the market - circumstances that prevent (restrict) economic entities functioning in this market from leaving such market in order to find buyers (sellers) on other commodity markets because of the difficulties of selling what they invested their capital in;

national market - commodity market, territorial (geographic) boundaries of which cover the territory of the country;

monopolisation * - achievement by an economic entity of a monopoly (dominant) position in the commodity market, maintaining or strengthening such position;

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* pursuant to the Law of Ukraine *On Protection of Economic Competition* (2210-14)

monopoly (dominant) position of an economic entity - a position of an economic entity in the market that enables it - independently or jointly with other economic entities - to determine the conditions of turnover of commodities in the market because such economic entity:

has no single competitor in the commodity market or does not experience any significant competition as a result of limited possibilities for other economic entities' access to procurement of raw stuff, materials or sale of goods, existence of barriers for entry to the market for other economic entities, as well as existence of benefits or other circumstances;

is one of two or more economic entities operating in the commodity market if there is no or insignificant competition between them, and if at the same time they (jointly) do not have a single competitor in this commodity market or do not experience any significant competition as a result of limited possibilities for access of other economic entities to procurement of raw stuff, materials or sale of goods, existence of barriers for entry to the market for other economic entities, as well as existence of benefits or other circumstances. In particular, if an economic entity is one of such economic entities, and at the same time the said economic entities, the number of which does not exceed three, own the largest shares in the market that, taken together, exceed 50 per cent; and if their number is up to five - 70 per cent;

demand - certain amount of goods, which the consumers are ready and/or able to buy for certain price within a specific territory during a specific period;

supply - certain amount of goods, which an economic entity produces (or is able to produce) and supplies (or is able to supply) to the market at the offered price within a specific territory during a specific period;

regional commodity market:

a commodity market, territorial (geographic) boundaries of which cover the territory of a certain region (Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol), including parts of a respective region;

a commodity market, territorial (geographic) boundaries of which cover the territory of several regions (Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol), including parts of several regions;

a market of commodities (commodity market) - the sphere of turnover of (interchangeable) goods, for which there is a demand and supply for a certain period within a certain territory;

market (monopoly) power - ability of an economic entity (a group of economic entities) to determine or exercise significant impact on the conditions of turnover of goods in the market, to prevent, eliminate or restrict competition, in particular by raising price and keeping it above the level that would exist under the conditions of significant competition;

consumer - legal entity or individual engaged in activities related to purchasing and using goods, services or works in the respective commodity market (markets);

degree of market openness - the share of goods (commodity groups), which are brought from outside geographic (territorial) boundaries of the market in the total market volume;

commodity market entities - economic entities, legal entities and individuals that sell, supply, produce, buy, consume, use or can sell, supply, produce, buy, consume, use goods in the market within respective boundaries;

territorial (geographic) boundaries of the market - territory with the sphere of buy-and-sell relations involving the commodity (group of goods), within which under ordinary conditions a consumer have no difficulty satisfying their demand for certain commodity, and which can be, as a rule, the territory of a state, oblast, district, city, etc. or a part thereof;

commodity * - any item in economic turnover, including products, works, services or documents confirming obligations and rights (including securities);

* pursuant to the Law of Ukraine *On Protection of Economic Competition* (2210-14)

commodity boundaries of the market - goods (commodity group), a totality of similar homogeneous items in economic turnover, within which a consumer under normal conditions can switch from using a certain type of items in economic turnover to consuming another type;

time boundaries of the market - the period of stability on the market, i.e. the period, during which the market structure and correlation of demand and supply at it do not change significantly.

The terms “economic competition (competition)”, “information”, “control”, “authorities”, “bodies of administrative and economic management and control”, “economic entity” are used as defined in Article 1 of the Law of Ukraine *On Protection of Economic Competition* (2210-14) (hereinafter - the Law).

2. Determining Monopoly (Dominant) Position

2.1. Determining a monopoly (dominant) position of economic entities can include the following actions:

2.1.1. identification of entities to be analysed in order to determine a monopoly (dominant) position, namely an economic entity (a group of economic entities), a specific commodity (product, work, service) that is produced, supplied, sold or bought (consumed, used) by such economic entity (entities);

2.1.2. compilation of a list of goods (works, services), with regard to which a monopoly (dominant) position of the economic entity has to be determined, and which have characteristics of the same goods or the same commodity group;

2.1.3. compilation of a list of primary sellers (suppliers, producers), buyers (consumers) of goods (commodity groups);

2.1.4. identification of commodity boundaries of the market;

2.1.5. identification of territorial (geographic) boundaries of the market;

2.1.6. identification of a period of time, for which the position of economic entities in the market has to be determined - identification of the time boundaries of the market;

2.1.7. identification of the volume of goods in the market;

2.1.8. calculation of the shares of economic entities in turnover on the market;

2.1.9. compilation of a list of sellers (suppliers, producers), buyers (consumers) of goods (a commodity group) - potential competitors, buyers who can sell (supply, produce), buy (consume, use) the same and/or similar goods (commodity group) in the market;

2.1.10. identification of barriers for entering or exiting the market for economic entities that sell (supply, produce), buy (consume, use) or can sell (supply, produce), buy (consume, use) the same and/or similar goods (commodity group) in the market;

2.1.11. determination of a monopoly (dominant) position of the economic entity (entities) in the market.

2.2. Stages of determining a monopoly (dominant) position of economic entities in the market, their number and order of performance as specified in Clause 2.1 of this Methodology can be changed depending on the actual circumstances, including specific characteristics of the goods, market structure, scope of available information about the market, and others.

3. Identification of Entity Subject to Analysis for Determining a Monopoly (Dominant) Position

3.1. Entities subject to analysis for determining a monopoly (dominant) position are:

an economic entity;

a group of economic entities;

specific goods (product, work, service), which is produced, supplied, sold, bought (used, consumed) by the respective economic entity (entities).

3.2. Entities subject to analysis for determining a monopoly (dominant) position also include state authorities, local self-government bodies, as well as bodies of administrative and economic management and control in the part of their activities related to production, sale and purchase of goods or other economic activities.

3.3. Composition of an economic entity that produces, supplies, sells, buys (consumes, uses) specific goods is identified by means of identifying a list of economic entities (legal entities and individuals) engaged in production, sale, procurement of goods or in other economic activities, including control over another legal entity or individual, which are tied through connections ensuring control of economic activities of one economic entity by other economic entity (entities).

3.4. Composition of a group of economic entities is identified by means of identifying a list of independent economic entities, to which the economic entity (entities) belong(s) that produce(s), supply (-ies), sells(s), buy(s) (consume(s), uses(s)) specific goods (products, works, services).

4. Identification of List of Goods and Primary Sellers and Buyers of Such Good That Are Subject to Determining Monopoly (Dominant) Position

4.1. A list of goods that are subject to determining a monopoly (dominant) position of an economic entity consists of goods (commodity groups) circulating in Ukraine or on a respective part of its territory that demonstrate characteristics of the same (similar, analogical) goods (commodity group) for sellers (suppliers, producers) or buyers (consumers, users).

4.2. Characteristics of the same (similar, analogical) goods (commodity group) are identified based on similarity, namely:

4.2.1. Consumer characteristics:
functional purpose;
physical characteristics;
technical and operational characteristics;
degree of novelty of the goods.

4.2.2. Consumption features that are identified on the basis of:
the need for energy supply, water supply, etc.;
specific requirements for placement, installation, etc.;
level of technical maintenance, transportation support.

4.2.3. Terms of sale:
through a wholesale system or under individual or direct contracts, including barter or toll settlement schemes;
through a retail sale scheme, including through a branded trade network;
scope of additional services and benefits for buyers.

4.2.4. Prices.

4.3. Intermediate results of activities of economic entities that are not sold on the market but used in a technological process of their own production are not seen as goods.

4.4. A list of primary sellers (suppliers, producers), buyers (consumers, users) can be compiled by means of identifying economic entities that have significant volumes of sale (supply, production) and purchase (consumption, use) of goods (consumer groups) circulation in Ukraine or on a respective part of its territory.

Significant volumes of sale (supply, production) and purchase (consumption, use) of goods (commodity groups) are deemed to be volumes that, as a rule, exceed five per cent of the known volumes of goods (commodity groups) that have characteristics of the same (similar, analogical) goods, and that circulate in Ukraine or on a respective part of its territory.

5. Determining Commodity Boundaries of the Market

5.1. Commodity boundaries of the market are identified by means of forming a group of interchangeable goods (commodity groups), within which a consumer under ordinary conditions can switch from consuming one commodity to consuming another.

Groups of interchangeable goods (commodity groups) are formed using the goods included in the list that have characteristics of the same (similar, analogical) goods (commodity groups) for sellers (suppliers, producers) or buyers (consumers, users) based on interchangeability factors, such as:

similarity of purpose, consumption features, conditions for use, etc.;

similarity of physical, technical and operational features and characteristics, quality indicators, etc.;

existence of a common group of consumers of the goods (commodity group);

absence of a significant difference in prices;

interchangeability of goods (commodity group) in terms of their production, i.e. ability of producers to offer new goods for replacing the existing ones.

In the process of determining commodity boundaries of the market, a preliminarily determined group of interchangeable goods (commodity groups) can be divided into several sub-groups or merged with another group.

5.2. In the course of analysis, it needs to be taken into consideration that interchangeable goods belong to a group of similar goods (commodity groups) that are seen by a consumer as the same goods (commodity group) and that can be standardised or differentiated.

5.3. Standardised goods (commodity groups) can be goods that have a uniform system of indicators or parameters that characterise the goods, for production of which the same or similar technical standards, technical conditions, standards of use, etc. are applied.

5.4. Differentiated goods (commodity groups) are characterised by certain differences in consumer features, appearance, quality characteristics, consumption period, scope of additional services (service maintenance) that enable consumers to differentiate in some way the advantages of specific goods (consumer group) produced (sold) by the respective economic entity (seller) from other similar goods (commodity groups) to satisfy specific demand.

6. Determining Territorial (Geographic) Boundaries of the Market

6.1. Territorial (geographic) boundaries of the market of specific goods (commodity group) are determined by means of identification of the minimum territory, beyond the boundaries of which, from the point of view of a consumer, buying the goods (commodity group) belonging to the group of interchangeable goods (commodity group) is either impossible or not feasible. In this process, the following may be taken into consideration among other things:

physical and technical characteristics of the goods (commodity group);

technological ties between producers and consumers;

possibilities for technical, warranty and subscription services;

correlation of prices, in particular the level of prices for certain goods (commodity groups) within the respective market that is acceptable for producers or consumers;

possibilities for shifting the demand for goods (commodity group) from one territory to another that is assumed to belong to the same geographic market, in particular a possibility to preserve the level of quality and consumption features of the goods (commodity group) during transportation;

the level of transportation costs, including specific requirements of transportation of the goods (commodity group);

availability of trade and warehousing premises, facilities for loading and unloading, possibilities for carrying out pre-sale preparation;

existence of marks for goods and services;

the presence and the level of barriers in a respective territory for bringing the goods (commodity group) in and out, namely: administrative barriers; economic and organisational restrictions; impact of vertical (horizontal) integration; barriers resulting from the production scale effect; barriers based on an absolute prevalence of the level of costs; barriers related to the size of capital costs or volume of investments necessary for entering a specific commodity market; limits for demand; environmental restrictions; barriers preventing exit from the market, etc.;

location of specific groups of consumers;

the level of prices for specific goods (commodity groups) at respective adjacent territories, and a possibility to move the supply of goods (commodity group) between these territories.

For the final determination of territorial (geographic) boundaries of the market, the decisive factor is a lower ability to move either the demand or the supply.

6.2. Correctness of the determined territorial (geographic) boundaries of a commodity market can be checked by analysis of the market openness for inter-regional and/or international trade.

6.3. The level of market openness (hereinafter - the LMO) for international or inter-regional trade is assessed on the basis of an indicator that is calculated as percentage of the amount of total volume of goods brought in (imported) to the market from other regions of the state (other countries) with regard to the total market volume using the following formula:

$$CBP = \frac{Q_V}{Q_{RT}} \cdot 100[\%],$$

where Q_V means the volume of goods imported to the respective market from outside this market (for the national market - the volume imported to Ukraine);

Q_{RT} refers to the total volume of sold (purchased) goods (commodity group) on the market within the given territorial (geographic) boundaries.

For regional markets, when:

CBP < 30 % it means the analysed territory was determined correctly as territorial (geographic) boundaries of the market;

CBP > 30 % it means that territorial (geographic) boundaries of the market require additional analysis with regard to potential existence of the commodity market with such territorial (geographic) boundaries as well as possible expansion of these boundaries.

For national markets, when:

CBP < 40 % it means the territory of the state is the territorial (geographic) boundaries of the market;

CBP > 40 % it indicates openness of the national market and may require additional analysis of impact of foreign sellers, suppliers and producers on the position held by the economic entity (entities) in such market.

7. Time Boundaries of the Market

7.1. Time boundaries of the market are determined as a period of time (normally - a year), during which the totality of commodity-money relations between sellers (suppliers, producers) and consumers creates a commodity market with a stable structure.

7.2. In those cases when the period of complete turnover of the advance capital in production of respective commodity exceeds one year, then the time boundaries of the market are determined as a period of time totalling one to three of the said periods of capital turnover.

7.3. A period of time under one year can be recognised as the time boundaries of the market provided that:

the period of complete turnover of the advance capital in production of respective commodity is significantly shorter than one year;

during this period, in response to a significant increase of prices in the market, sellers (suppliers, producers) have a possibility to take respective measures and stabilise supply, whereas a considerable number of consumers who reduced consumption as a result of such increase can without significant difficulty restore the consumption volumes;

a monopoly (dominant) position of the economic entity (entities) results from provision of special rights, powers or benefits granted to it by state authorities, local self-government bodies or bodies of administrative and economic management and control or other economic entities that hold a monopoly (dominant) position.

Significant increase of prices means increase of prices totalling or exceeding 5 per cent.

8. Calculating Share of Economic Entities in the Market

8.1. The share of the market, for which a monopoly (dominant) position is determined, is calculated as a total volume of commodity coming to the market with the help of the following formula:

$$Q_{RT} = S_{j=1}^{n} Q_j,$$

where n means the number of economic entities that sell (supply, produce) or buy (consume, use) goods (commodity groups) that belong to the commodity boundaries of the market;

Q_j is the volume of goods (commodity groups) that are sold (supplied, produced) or purchased (consumed, used) by the j^{th} economic entity during the period equal to the time boundaries of the market;

Q_{PT} refers to the market volume.

Quantitative indicators Q_{PT} and Q_j are stated in natural and/or cost terms. Natural indicators are used in the case when a uniform indicator can be used for all commodities that constitute the commodity boundaries of the market.

In other cases, cost indicators are used.

8.2. The volume of goods (commodity groups) that are sold (supplied, produced) or purchased (consumed, used) by the j^{th} economic entity is calculated as the total volume of sold or purchased goods (commodity groups) that constitute commodity boundaries of the market during the period equal to the time boundaries of the market using the following formula:

$$Q_j = S_{i=1}^{m} Q_{ji},$$

where S indicates the sum;

m refers to the amount of goods (commodity groups) that belong to commodity boundaries of the market and are sold (supplied, produced) or purchased (consumed, used) by the j^{th} economic entity;

Q_{ji} is the volume of the i^{th} goods (commodity group) that is sold (supplied) produced) or purchased (consumed, used) the by j^{th} economic entity.

8.3. The volume of the goods (commodity group) that are sold (supplied, produced) or purchased (consumed, used) by the j^{th} economic entity is calculated using the following formula:

$$Q_{ji} = Q_{\text{в}ji} - \text{Д}Q_{\text{з}ji} - Q_{\text{вн}ji} - Q_{eji} + Q_{iji},$$

Д - Delta;

where Q_{ji} means the volume of the i^{th} goods (commodity group) that is sold (supplied, produced) or purchased (consumed, used) by the j^{th} economic entity;

$Q_{\text{в}ji}$ refers to the volume of the produced i^{th} goods (commodity group) by the j^{th} economic entity;

$\text{Д}Q_{\text{з}ji}$ indicates changes of the volume of stock of the i^{th} goods (commodity group) of the j^{th} economic entity during the period equal to the time boundaries of the market;

$Q_{\text{вн}ji}$ refers to the volumes of the i^{th} goods (commodity group) that are used by the j^{th} economic entity in the technological process of its production;

Q_{eji} means the volumes of the i^{th} goods (commodity group) brought out (exported) outside the boundaries of the respective market by the j^{th} economic entity;

Q_{iji} means the volumes of the i^{th} goods (commodity group) brought in (imported) to the boundaries of the respective market by the j^{th} economic entity.

The volume of the i^{th} goods (commodity group) that is purchased (consumed, used) is determined as the volume of goods (commodity group) bought by the j^{th} economic entity during the period equal to the time limits of the market.

8.4. The share of an economic entity in the market is calculated using the following formula:

$$Q$$

$$j$$

$$P_j = \frac{\qquad}{Q_{RT}} \cdot 100\ [\%],$$

where P is the market share of the j^{th} economic entity (j = 1, j 2, ..., n);

Q_{nj} means the volume of goods (commodity group) that are sold (supplied, produced) or purchased (consumed, used) by the j^{th} economic entity;

Q_{PT} is the market volume.

8.5. The aggregate market share of several economic entities, namely five, four, three and two largest economic entities is calculated using the following formula:

$$S_{Pn} = S_{j=1}^{m} P_{nj}\ (\%),$$

where S is the sum;

m = 2, 3, 4, 5 is the number of economic entities, the share of which is taken into account for calculating the aggregate share, in particular the share of economic entities having one of the five, four, three or two largest shares in the market;

P_{nj} is the market share of the j^{th} economic entity;

S_{Pn} is the aggregate market share of 5, 4, 3, 2 economic entities respectively that hold the largest market shares.

8.6. Market shares of economic entities in the absence of reliable information about the volumes of goods (commodity groups) that are sold (supplied, produced) or purchased (consumed, used) can be calculated on the basis of estimates of respective indicators, available production facilities or other indicators characterising the volumes of sale (supply, production) or purchase (consumption, use) of goods (commodity groups) in the market.

9. Determining Potential Competitors

9.1. Potential competitors are the following economic entities:

those that have a material and technical base, human resources, technologies, etc. but for various reasons do not use these possibilities;

those that produce goods (commodity groups) that belong to commodity boundaries of the market but do not use them in the respective market;

new economic entities that can enter the market.

9.2. Barriers for potential competitors entering the respective market are:

limited demand related to high saturation of the market with goods (commodity groups) and low purchasing power of the buyers;

administrative restrictions;

economic and organisational restrictions;

environmental restrictions;

underdevelopment of the market infrastructure;

other restrictions that necessitate significant expenses for entering a specific market of goods (commodity group).

9.3. The presence of at least one barrier for entering the market that cannot be overcome by an economic entity during 1 - 2 years because it is impossible during this time to compensate the expenses necessary for entering the market is seen as an indicator showing that an economic entity is not a potential competitor.

10. Determining a Monopoly (Dominant) Position

10.1. Determining a monopoly (dominant) position of the economic entity (entities) consists of the following actions:

10.1.1. determining a share of the economic entity, an aggregate share of several economic entities holding the largest market shares (five, four, three or two respectively);

10.1.2. establishing that a share of the economic entity, an aggregate share of several economic entities holding the largest market shares exceeds the quantitative indicators specified in Article 12 of the Law (2210-14), namely for:
one economic entity - 35 per cent;
three or two economic entities - 50 per cent;
five or four economic entities - 70 per cent;

10.1.3. disproving (if necessary) arguments of the defendant (defendants) concerning the absence of a monopoly (dominant) position in the market;

10.1.4. recognising a monopoly (dominant) position of the economic entity whose market share exceeds 35 per cent for each of several (five, four, three or two) economic entities holding the largest market shares that jointly exceed 70 or 50 per cent respectively;

10.1.5. in the event of determining a monopoly (dominant) position of the economic entity whose market share is under 35 per cent:
establishing the indications of the fact that the economic entity does not experience significant competition in the market;
disproving arguments of the economic entity that it experiences significant competition, and recognising that the economic entity has a monopoly (dominant) position in the market.

10.1.6. in the event of determining a monopoly (dominant) position of several economic entities (except for the cases described in Clause 10.1.4):

10.1.6.1. establishing the indications that:
there is no competition among the said economic entities or the existing competition is insignificant;
the said economic entities jointly do not experience significant competition or have no competitors;

10.1.6.2. disproving arguments (if any) of such economic entities concerning:
existence of significant competition between these economic entities;
the fact that the economic entities jointly have competitors and experience significant competition;

10.1.6.3. determining a monopoly (dominant) position of each of several economic entities.

10.2. A position of the economic entity (entities) is determined to be a monopoly (dominant) position when:

10.2.1. A share of one economic entity in the market exceeds 35 per cent unless it proves that:
it has a competitor (competitors) in the market;
it experiences significant competition as a result of the absence of restrictions for possibilities of other economic entities' access to buying raw stuff, materials or sale of goods, as well as the absence of barriers for other economic entities entering the market, absence of benefits or other circumstances;

10.2.2. an aggregate market share:
of three or two economic entities holding the largest market shares exceeds 50 per cent;
of five or four economic entities holding the largest market shares exceeds 70 per cent unless they prove that:
there exists significant competition between them;
they jointly have a competitor (competitors) in the market and experience significant competition as a result of absence of restrictions for possibilities of other economic entities' access to buying raw stuff, materials or sale of goods, as well as the absence of barriers for other economic entities entering the market, absence of benefits or other circumstances;

10.2.3. a share of one economic entity in the market is below 35 per cent unless it disproves the arguments of bodies of the Antimonopoly Committee of Ukraine that it does not experience significant competition in particular as a result of a comparatively low size of the market shares held by competitors;

10.2.4. if two or more economic entities (except for the cases set forth in Clause 10.2.2 of this Methodology) fail to disprove arguments of bodies of the Antimonopoly Committee of Ukraine that:

there is no significant competition between them or the existing competition is insignificant;

they jointly have no competitor in the market or significant competition as a result of absence of restrictions for possibilities of other economic entities' access to buying raw stuff, materials or sale of goods, as well as the absence of barriers for other economic entities entering the market, absence of benefits or other circumstances.

10.3. The economic entity (entities) do not experience significant competition if, due to their market power, they are able to prevent, eliminate or restrict competition, in particular restrict the competitive power of other economic entities or infringe interests of other economic entities or consumers.

The signs of market power include:

an ability of the economic entity (entities) that is (are) not the only producer(s) (supplier(s)) of the respective goods (commodity group) to dictate their conditions for selling the goods (commodity group), signing supply agreements or imposing unfavourable conditions upon a consumer;

an ability of the economic entity (entities), through monopolisation of the market of supplying production resources, to restrict competition, oust from the market other entrepreneurs producing respective goods (commodity groups) using these production resources, or to create barriers for entering the market;

an ability of the economic entity (entities) to shorten or to limit release of goods (commodity groups) and their supply to the sale market in order to receive unilateral benefit when buying or selling goods (commodity groups), signing contracts and agreements on supply of goods (commodity groups), while other economic entities who are its competitors are not able to compensate the created deficit of goods (commodity groups);

an ability of the economic entity (entities) to raise prices for goods (commodity groups) and maintain them at the level that exceeds the level stipulated by market competition.

It is determined that the economic entity (entities) does (do) not experience significant competition among other things when:

it has (they have) no single competitor in the market;

the market shares held by competitors are of a relatively small size;

possibilities for access of other economic entities to purchase of raw stuff, materials and sale of goods (commodity groups) are significantly limited;

there are barriers for access to the market for other economic entities, there are benefits or other circumstances that significantly restrict access to the market for new economic entities.

10.4. The following are also seen as indicators of existence of the market power:

high level of the market concentration;

high barriers for potential competitors entering the market;

a long period of closeness of the market for entrance of new economic entities;

a significant quantitative prevalence of a share of the economic entity (entities) over the shares of other competitors under the conditions of a stable market structure during a long period;

significant shares of the economic entity (entities) on vertically adjacent markets (resources, transportation services, trade services, advertising services, and others) and on territorially adjacent markets;

analysed entity's possessing special rights, powers or benefits, in particular those granted by state authorities, local self-government bodies, bodies of administrative and economic management and control or other economic entities holding a monopoly (dominant) position.

10.5. In the event of the need to prove a monopoly (dominant) position of the economic entity (entities) or disprove arguments of the economic entity (entities) concerning the absence of a monopoly (dominant) position and to make a decision on recognising the position of the economic entity (entities) to the the monopoly (dominant) position, bodies of the Antimonopoly Committee of Ukraine can adjust the commodity, territorial (geographic) or time boundaries of the commodity market.

11. Sources of Information for Determining Monopoly (Dominant) Position

11.1. For determining a monopoly (dominant) position of economic entities in the market, the following sources of information can be used:

statistical information (data) - official state information describing mass phenomena and processes taking place in economic, social and other spheres of life in Ukraine and its regions;

administrative data - data received asa results of observations carried out by state authorities (except for the state statistics authorities), local self-government bodies and other legal entities in accordance with the legislation and for the purposes of performing administrative duties and functions assigned to their terms of reference.

In addition to this, the following can also be used:

data of sample surveys and public opinion polls as well as surveys of other buyers (individuals and legal entities) concerning the market situation - the totality of respondents, answers to a certain scope of questions, in particular about the buyers' opinion regarding the range and quality of goods, assessment of intentions and motives of the buyers' behaviour, their preferences, wishes and requirements for consumer features of goods and their irreplaceability, as well as characteristics of the use of goods;

data of panel surveys of consumers - information about consumers' opinions and behaviour received on the basis of permanent groups (panels) of consumers that are a representative model of the overall totality of consumers;

data describing production plans of entrepreneurs participation in the market, in particular data published in the mass media;

data of official and independent research and information centres on the conditions, structure and volume of commodity markets, and involvement of individual producers and buyers in the commodity turnover;

survey of experts (specialists in the respective filed) concerning assessment of the level of market balance (demand and supply) as well as the buyers' priorities concerning consumption features of the goods by selected criteria of irreplaceability of goods in forming commodity groups;

data characterising activities of economic entities collected by bodies of the Antimonopoly Committee and other state authorities during the current and previous years.

Head of the Main Department on
Competition Policy M. Barash