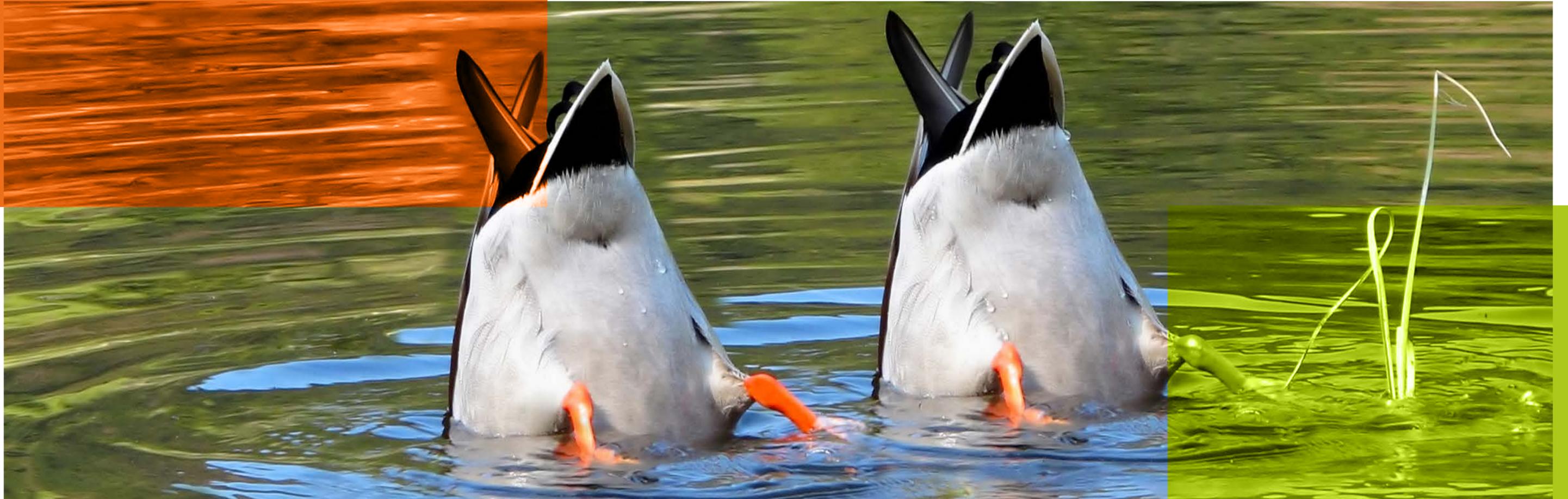


Concerted Actions in Ukraine



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Introduction

The state guarantees all business entities, irrespective of their form of organization and form of ownership, equal rights and creates equal opportunities for them when using natural, material, technical, labor, financial and other resources. At the same time, any competition of business entities in the commodity markets implies the risk of negative financial consequences for each individual entity. Therefore, in practice, market participants coordinate their activities (concerted actions), eliminating the risks associated with competition.

Coordination (concerted actions) of business entities may be manifested in any coordinated behavior (actions, omissions) of market participants, in particular, when they enter into agreements in any form; jointly make decisions in any form; establish a business entity whose objective or result is the coordination of the competitive behavior between the business entities having established such a business entity or between them and the newly established business entity. Since concerted actions are considered to be anticompetitive, if they may result in prevention, elimination or restriction of competition, that is, if the occurrence of these effects is possible, it is irrelevant for the definition of these actions whether prevention, elimination or restriction of competition has actually occurred.

Prevention of competition involves creating a situation where barriers to entry of potential competitors rise or conditions are created in which the business entities operating in one market do not compete for objective reasons (for example, because of the territorial distance to raw material production plants). In this case, prevention of competition may take place in a market where there was no competition at all. Elimination of competition is defined as the complete termination or significant

restriction of competition between competitors, as a result of which the buyers (sellers) lose the opportunity to choose between sellers (buyers). Restriction of competition occurs in a market where the influence of factors that are essential to competition decreases as a result of emergence or strengthening of market power of the business entities concerned, being in each individual case characterized by the relevant qualitative and quantitative indicators.

According to Ukrainian laws, anticompetitive concerted actions shall be prohibited. The law imposes significant sanctions for carrying out such actions despite the prohibition. At the same time, certain concerted actions can be authorized by the Antimonopoly Committee of Ukraine in the manner prescribed by law. Therefore, the purpose of this brochure is to highlight the types of concerted actions leading to restriction of competition and procedures for their approval by the Antimonopoly Committee of Ukraine for the purpose of preventing negative impact on the commodity markets.

The information in this brochure is intended for general information purposes only and does not constitute legal advice. It merely provides a general overview of the applicable law. For further clarification of any information or facts contained in this brochure, please do not hesitate to contact the lawyers of DLF attorneys-at-law who will be happy to give you specific and detailed advice on your case.

September 2019

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1. Definition and types of concerted actions

Pursuant to part 1 of Article 6 of the Law of Ukraine On the Protection of Economic Competition (hereinafter the "Competition Law"), anticompetitive concerted actions are concerted actions that have resulted or may result in prevention, elimination or restriction of competition. Pursuant to part 4 of Article 6 of the Competition Law, anticompetitive concerted actions shall be prohibited and entail liability in accordance with the Competition Law. Thus, this means a general prohibition on all concerted actions that have or could have a negative effect on competition.

Part 2 of Article 6 of the Competition Law specifies a list of prohibited types of anticompetitive concerted actions of business entities, in particular:

- setting prices or creating other conditions for the purchase or sale of goods;
- limiting production, commodity markets, tech-

nical and technological development, investments or establishing control over them;

- dividing markets or sources of supply by territorial principle, range of goods, volume of their sale or purchase, by the range of sellers, buyers or consumers or by other principles;
- distortion of the results of auctions, bidding, tenders;
- elimination from the market or restriction of market access for other business entities, buyers or sellers;
- application of dissimilar conditions to equivalent transactions with other business entities, thereby placing them at a competitive disadvantage;
- concluding agreements subject to other business entities' accepting additional obligations which, by their nature or in accordance with



trade customs and other fair business practices, are not related to the subject matter of such agreements;

- a significant restriction of competitiveness of other entities on the market without valid reasons.

It should be noted that the list is non-exhaustive as the general prohibition provided for in part 1 of Article 6 of the Competition Law applies to any concerted actions that have led or may lead to prevention, elimination or restriction of competition.

In practice, the Competition Law differentiates between types of anticompetitive concerted actions depending on the objective of the concerted action participants, as well as on their position in the market.

Depending on the market structure and position of business entities in such market, there are three main types of anticompetitive concerted actions:

- a) horizontal,
- b) vertical and
- c) mixed.

1.1. Horizontal concerted actions

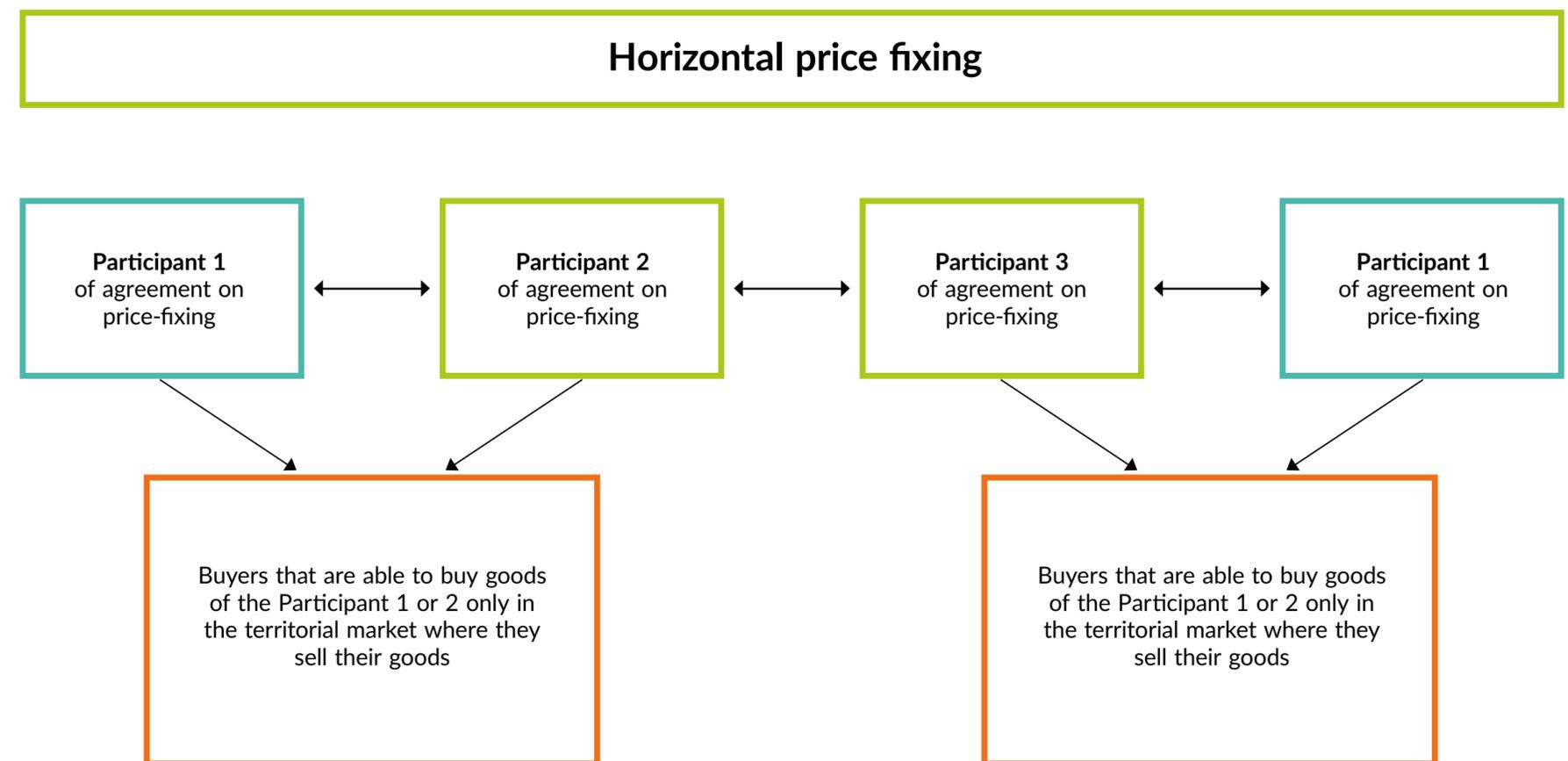
Horizontal anticompetitive concerted actions are concerted actions (transactions) implemented (concluded) in a commodity market where the concerted action participants are actually competitors, which, as a result of the actions provided for in Article 6 of the Competition Law, restrict competition between competitors.

The implementation of such concerted actions primarily implies setting excessively high prices, market allocation or elimination of competitors from the market. An example of this is the case of anticompetitive concerted actions in the photographic services market, when market participants actually eliminated competition by setting the same prices. This kind of concerted actions is considered to pose the greatest threat to competition.

Horizontal anticompetitive concerted actions may also include:

- joint sales (including exports),
- joint procurements (in particular imports),

- specialization of production and investment limitation,
- distortion of the results of auctions, bidding, tenders,
- and others; the list is non-exhaustive, with the main criterion for horizontal concerted actions being as follows:
 - o the same or adjacent market
 - o restriction and/or coordination of actions in the market
 - o elimination of competition among themselves in the respective market.



Horizontal anticompetitive concerted actions against competitors imply joint actions aimed at causing damages to or obstructing the competitors that are not part of the group. Such anticompetitive concerted actions allow business entities that are participants of concerted actions to reduce prices after the companies against which anticompetitive concerted actions are being implemented are placed at a competitive disadvantage.

Such anticompetitive concerted actions may include situations in which business entities reduce their competitors' revenues by using boycotts and predatory pricing (setting very low prices with the intention to drive competitors out of the market).

Moreover, business entities may agree to raise costs for competitors and thereby make them set high prices. This, in turn, allows the parties to conspire to raise prices to the competitors' level (known as the umbrella effect).

Business entities may agree to interfere with business activities of both existing and potential competitors. That, in turn, allows either to increase prices or to impede entry into the market, thereby gradually eliminating competitive prices.

Such actions result in forcing competitors to leave the market or limiting their competitiveness.

1.2. Vertical concerted actions

Vertical anticompetitive concerted actions are defined as actions carried out by business entities in different commodity markets, with their participants being in the seller-buyer relationship, which imply restriction of the

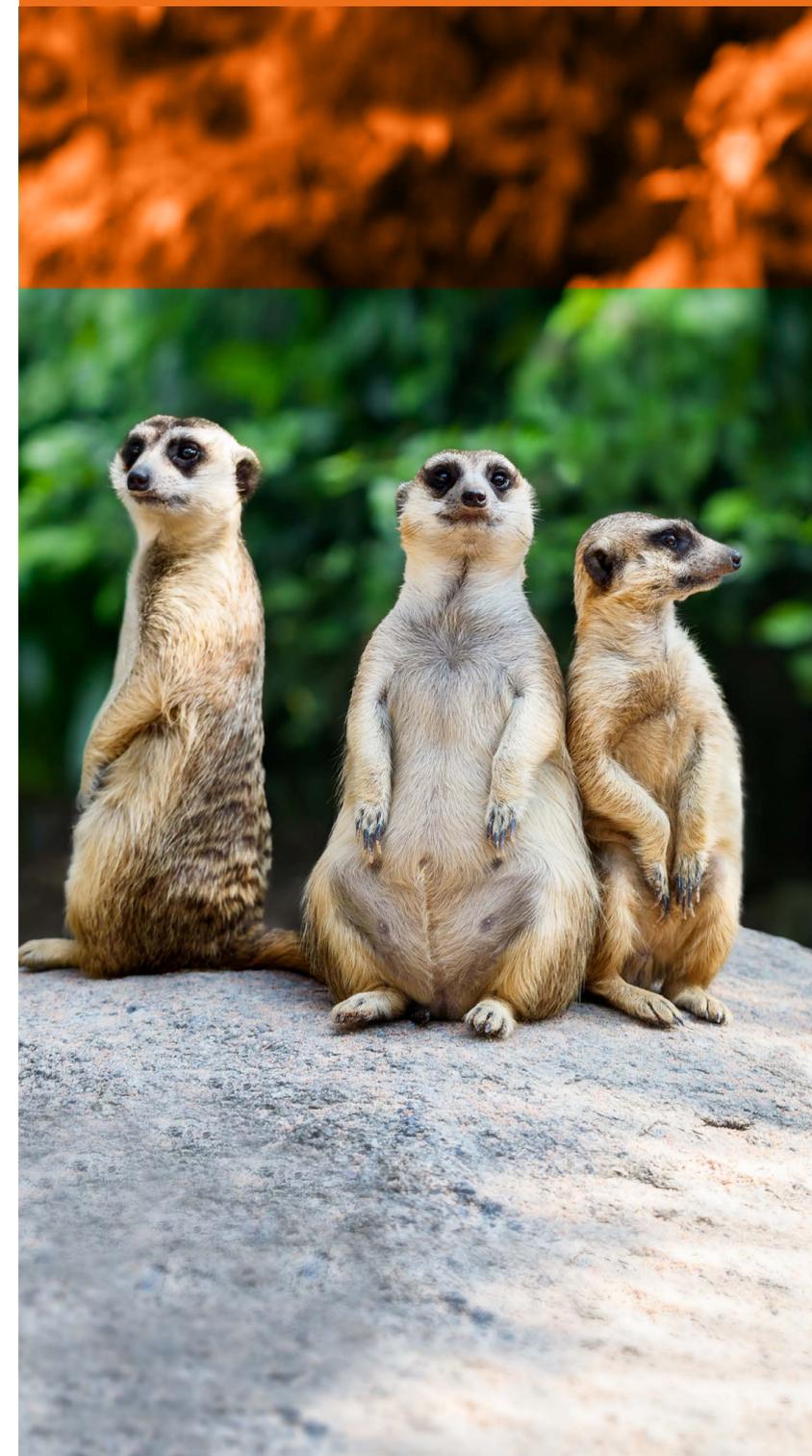
business activities of at least one of the parties in its relations with the third parties and which lead or may lead to prevention, elimination or restriction of competition.

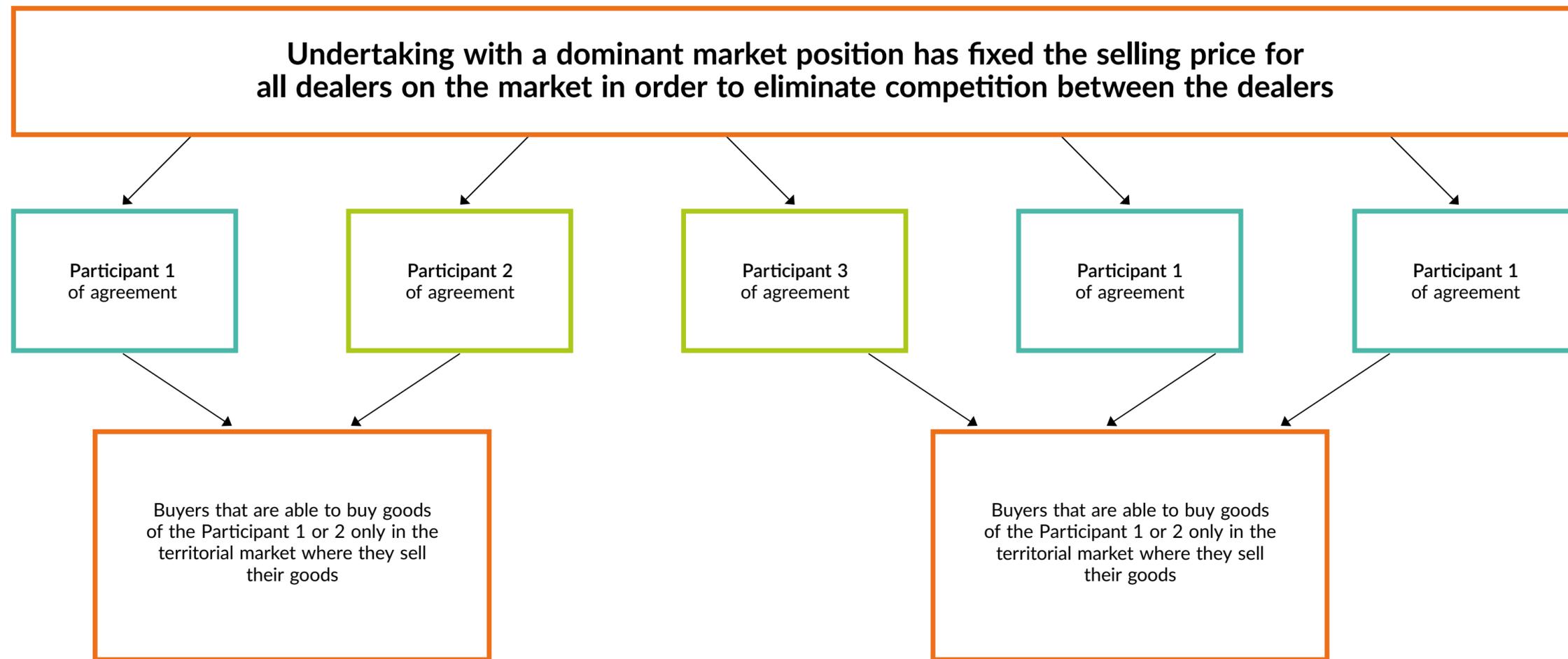
The most common example of vertical anticompetitive concerted actions is the resale price maintenance whereby a supplier of a product and its distributor agree that the distributor will sell the product to other entrepreneurs or consumers at certain prices. In this case, the resale price can be set both above and below the competitive price. However, the violation consists not in setting the price level, but in the consequences of concerted actions: the distributor does not set the resale price independently competing with other distributors, but quite the opposite, the distributor acts in agreement with the supplier having a dominant market position or a significant market power.

Business entities taking part in anticompetitive concerted actions resulting in price-fixing aim to achieve significant market power or gain a dominant market position. The dominant market position and anticompetitive concerted actions are characterized by and result in price increases or market allocation.

There are following types of vertical price-fixing regarded as anticompetitive concerted actions:

- setting (fixing) prices (rates) at a certain level;
- product or price differentiation;
- distortion of bidding (of bid prices).





Price-related concerted actions may consist in agreeing on conditions of market participants' activities other than the price, which, however, directly or indirectly affect it. For example, business entities may agree to change the product characteristics, slow down or cancel the innovation introduction in order to reduce costs or increase profits, which will ultimately affect the product price of concerted action participants.

The principle of differentiation refers to business entities seeking to differentiate their products in order to reduce

competition in the market concerned. Consumers who have a permanent interest in the unique characteristics of the products of a business entity (whether real or illusory) are able to pay a surcharge to the price depending on how strong their interest is. If there are buyers who are more than others inclined to switch to consuming competitors' products, the business entity will seek to isolate them from other customers by offering them special conditions not offered to loyal customers.

Anticompetitive agreements can have similar effects, in-

creasing consumers' search costs: agreements providing for the provision of incomplete information; restricting the right of those who provide professional services to act under the trademark of a well-known company selling related goods or services; agreements regarding the non-provision of consultative information on the competitors' activities; agreements increasing the risks of price discrimination and granting discounts to certain consumer groups.

Advertising as a way of product differentiation usually

softens the competition. On the other hand, advertising may contain information on the product characteristics, in particular on product pricing, creating incentives for comparative analysis of this type of products or services and, as a result, making competition tougher. Therefore, unlike brand promotion, price-related advertising works against the differentiation principle, increasing the consumers' ability to compare prices for different product options. Therefore, an agreement to restrict price-related advertising among market participants increases the complexity of the comparison made by consumers. This, in turn, means that, acting relatively independently, producers will have greater price freedom and the ability to set higher prices than under normal competition conditions.

Thus, a simple agreement prohibiting price-related advertising among business entities providing professional services such as lawyers, healthcare professionals, pharmacists, and accountants may be considered unlawful as it can significantly affect end consumers.

1.3. Mixed concerted actions

Mixed concerted actions encompass:

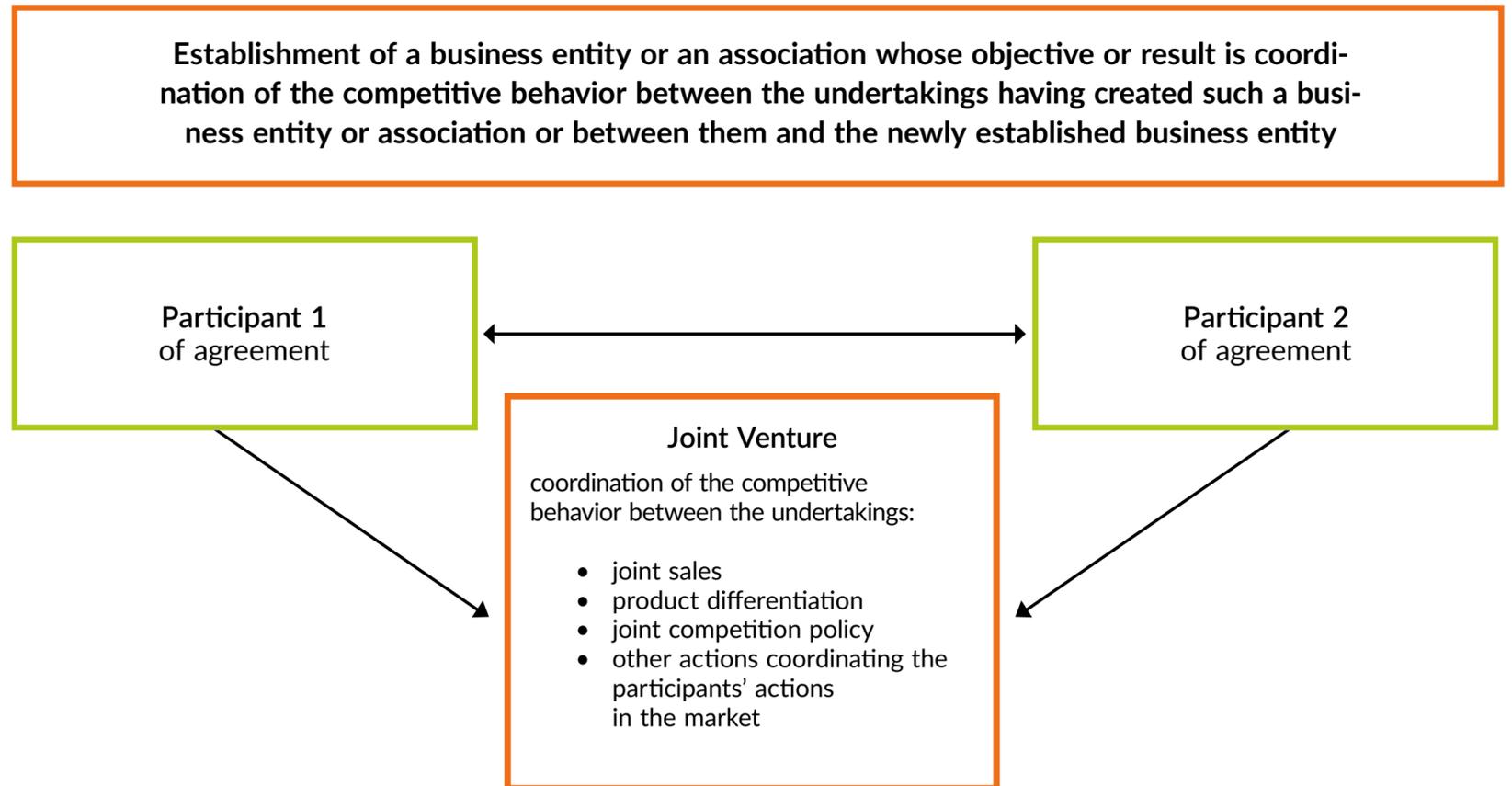
- conclusion of transactions by business entities in any form,
- decision-making by groups of undertakings in any form,
- any other coordinated competitive behavior (actions, omissions) of undertakings,
- establishment of a business entity or an association whose objective or result is coordina-

tion of the competitive behavior between the undertakings having created such a business entity or association or between them and the newly established business entity,

- becoming a member of such a group where a part of undertakings comprising participants of concerted actions are competing or may compete with each other in the same commodity market and at the same time they are or may be in the relations of purchase and sale in the relevant commodity markets (i.e. they act as seller-buyer, supplier-consumer), while the other part of undertakings do not compete and, under the existing circumstances,

cannot compete with each other in the same commodity market and are not or cannot be in the relations of purchase and sale in the relevant commodity markets (acting as seller-buyer, supplier-consumer).

Anticompetitive concerted actions result in a violation of the general business principles. The greatest threat to competition is posed by the anticompetitive concerted actions carried out by multinational companies, national monopolies, franchisees, monopoly owners of innovative products (thereby becoming producers of unique products), and business entities using particularly valuable, strategic or limited resources in their production process.



1.4. Not considered as anticompetitive actions

The law defines areas of economic activity and certain cases of concerted actions that result in an insignificant restriction of competition, but, nevertheless, are not prohibited by the law as economic benefits of such actions prevail over possible negative consequences for the economy.

In particular, pursuant to Articles 7, 8 and 9 of the Competition Law, the prohibition shall not apply to:

1. any voluntary concerted actions of small and medium-sized enterprises relating to joint procurement of goods, which do not result in significant restriction of competition and improve competitiveness of small and medium-sized enterprises;
2. concerted actions relating to the supply or use of goods, where a participant of concerted actions imposes, with respect to another participant of concerted actions, restrictions on:
 - use of goods supplied by the concerted action participant or goods of other suppliers;
 - procurement of other goods from other undertakings or sale of other goods to other undertakings or consumers;
 - procurement of goods which by their nature or in accordance with trade customs and other fair business practices do not constitute the subject matter of the agreement;

- setting of prices or other agreement terms regarding selling the supplied goods to other undertakings or consumers;
3. agreements concerning the transfer of intellectual property rights or the intellectual property use in the part where such agreements set restrictions on the business activities of the transferee, provided that such restrictions do not go beyond legitimate rights of the intellectual property rights' holder.

Moreover, the Antimonopoly Committee of Ukraine (hereinafter the "AMCU") may, by its regulations, establish typical requirements to concerted actions of business entities to qualify for general exemption from the prohibition on their implementation. Such regulations provide that if certain transactions between business entities meet the criteria established by the AMCU, such actions shall be permitted as they do not result in a significant restriction of competition. For example, the AMCU has adopted the following regulations in this area:

1. Typical requirements to concerted actions of business entities for their general exemption from obtaining prior approval of the AMCU bodies for concerted actions of business entities, approved by the AMCU Decree dated 12 February 2002 No. 27-p;
2. Typical requirements to concerted actions of business entities regarding production specialization, observance of which allows the implementation of such concerted actions without approval of the AMCU bodies, approved by the AMCU Decree dated 11 December 2008 No. 880-p.

IMPORTANT: It should be determined on a case-by-case basis whether the concerted actions in question are subject to exemptions specified in the Typical Requirements.



2. Application and notification procedure

2.1. General provisions for obtaining the AMCU approval for concerted actions

Concerted actions that by their very nature are subject to a general prohibition may be authorized by the relevant AMCU bodies if their participants prove that such actions contribute to:

1. production improvement;
2. purchase or sale of goods;
3. technical, technological, and economic development;
4. small or medium-sized entrepreneurs development;
5. optimization of goods export or import;
6. development and application of unified technical specifications or standards for goods; production rationalization.

IMPORTANT: Concerted actions may not be authorized by the AMCU bodies if competition is substantially restricted in the whole market or in a significant part thereof as a result of such actions.

The procedures for considering applications for concerted action clearance are laid down in the following documents:

1. Part IV of the Law of Ukraine On the Protection of Economic Competition;
2. Regulation on the Procedure for Submission of Applications to the AMCU for Approval for Concerted Actions approved by the AMCU's Order No. 26-p dated 12 February 2002 (Concerted Action Regulation);



3. Resolution of the Cabinet of Ministers of Ukraine dated 28 February 2002 No. 219. To obtain such approval, business entities must submit to the Ministry of Economic Development and Trade of Ukraine an application and a copy of the AMCU's decision on refusal of the respective concerted actions. The Ministry of Economic Development and Trade of Ukraine shall, within 10 days, create a commission (comprised of independent experts) on assessing the positive and negative effects of the concerted actions, which shall, within 20 days, prepare a draft decision of the Cabinet of Ministers of Ukraine and submit it to the relevant secretariat of the Cabinet of Ministers of Ukraine (Regulation on the Commission on Assessing the Positive and Negative Effects of Concerted Actions and Concentrations of Business Entities was approved by the Order of the Ministry of Economy of Ukraine dated 24 April 2003 No. 106).

Moreover, the Cabinet of Ministers of Ukraine may grant approval for concerted actions not authorized by the AMCU, if the concerted action participants prove that the positive effects for the public interest outweigh the negative impact of the restriction of competition.

2.2. Application for approval

The procedure for obtaining approval for concerted actions begins with the preparation and submission by the participants of concerted actions (or their representatives) of an application for approval accompanied by relevant supporting documents describing the concerted actions and proving their positive impact on the national economy.

The requirements to documents are explicitly stated in the Concerted Action Regulation, in particular:

1. The application for approval shall be submitted in writing and contain the following details:
 - a. the name of the authority where the application is filed;
 - b. a reference to the relevant statutory act (paragraph, part, article) providing for submitting the application to the AMCU or its territorial office;
 - c. name and details of the applicant and the applicant's representative (public authority, body of local self-government, body of administrative and economic management and control, business entity, individual, representative office of a foreign business entity in Ukraine, etc.);
 - d. description of the concerted actions for which the applicant is seeking approval;
 - e. content and description of the positive social effects of the concerted actions, in particular contributing to:
 - production improvement, purchase or sale of goods;
 - technical, technological, and economic development;
 - small or medium-sized entrepreneurs development;
 - optimization of goods export or import;
 - development and application of uni-

fied technical specifications or standards for goods;

- production rationalization.
2. List of documents and information to be filed along with the application for approval:

In case the constitutional documents are subject to state registration or notarization, the applicant must file copies of the constitutional documents, including copies of the constitutional documents of the business entities that are being created, prior to their state registration.

Upon obtaining the AMCU's approval and state registration of the aforesaid documents, the applicant shall, within ten days from the date of state registration, file copies of such documents with the AMCU.

In case of conclusion of agreements or adoption of resolutions by associations of undertakings containing a condition precedent stipulating that the respective agreement or resolution takes effect only in the event of obtaining the AMCU's approval, the applicant must file copies of concluded agreements (contracts), resolutions adopted by associations of undertakings.

In case of conclusion of other agreements, adoption of resolutions by associations of undertakings that are not subject to state registration, the applicant must file a draft resolution adopted by an association of undertakings, a draft agreement (contract) signed by all parties, indicating that the draft does not result in origination, change or termination of rights and obligations.

Upon obtaining the AMCU's approval for the respective resolution or conclusion of the respective agreement

(contract), the parties must, within ten days from the date of adopting the respective resolution or concluding the respective agreement (contract), submit to the AMCU the following documents in the form prescribed by the AMCU a copy of the respective resolution or concluded agreement (contract).

In case of other actions or decisions approving the competitive behavior of business entities, the applicant must file drafts of relevant decisions signed by the persons authorized to make such decisions, indicating that such drafts do not result in origination, change or termination of rights and obligations prior to their approval by the AMCU.

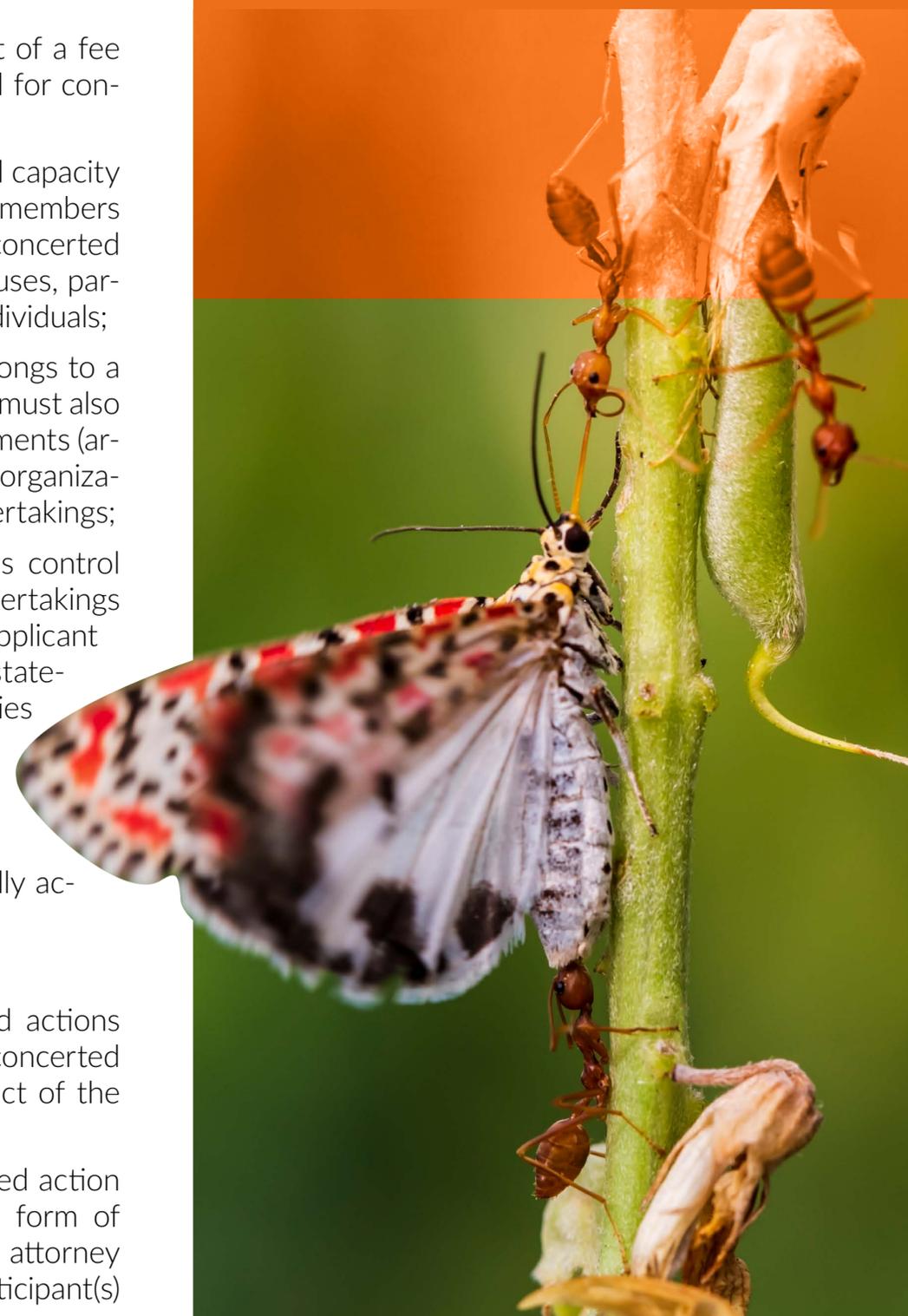
In all cases of applying for approval for concerted actions, the applicant must submit the following documents to the AMCU:

- a. copies of constitutional documents (articles of association, charter) of business entities participating in the concerted actions;
- b. information on the concerted actions implemented by the business entities, with an indication of the respective action nature, along with performance calculation;
- c. information on the main activities of each concerted action participant, their market shares, in particular, information on the main activities of business entities which comprise the concerted action participant;
- d. information on their shares on the national and regional commodity markets over the past two years;

- e. a document confirming the payment of a fee for filing the application for approval for concerted actions;
- f. a list of individuals having active legal capacity affiliated with individuals who are members of the business entities acting as concerted action participants, in particular spouses, parents, children, or siblings of such individuals;
- g. if a concerted action participant belongs to a group of undertakings, the applicant must also submit copies of constitutional documents (articles of association, charter) and an organizational chart of such a group of undertakings;
- h. if a group of undertakings exercises control over economic activities of the undertakings belonging to such a group, the applicant must additionally submit financial statements and information on the activities of the group and the undertakings belonging to the group.

Moreover, each application must be additionally accompanied by the following documents:

- feasibility study regarding concerted actions stating that the positive effects of concerted actions outweigh the negative impact of the competition restriction;
- written authorization of the concerted action participants' representatives (in the form of an agreement, mandate or power of attorney granted by the concerted action participant(s))



to authorize its/their representative to represent the interests of the concerted action participant(s) in the AMCU bodies);

- a document confirming the payment of application submission fee (a payment order with the bank's stamp or a receipt);
- calculation of the value (aggregate value) of assets or sales (aggregate sales) and the market share (aggregate market share) of each concerted action participant.

2.3. Competent authority

1. Antimonopoly Committee of Ukraine (AMCU)

Concerted actions that are subject to notification must be notified to the AMCU in due time and form by the parties involved, one of the parties involved or their representatives.

The AMCU is considered to be the central authority in the structure of the state bodies responsible for anti-trust matters. It is made up of ten state commissioners and a chairman. The AMCU is located in Kyiv and has a network of territorial offices in all regions of Ukraine.

2. Territorial offices of the AMCU

It should be noted that the territorial offices of the AMCU also deal with applications for approval for concerted actions though as a rule territorial office, after admitting the application, forwards it to the AMCU.

3. Administrative Board of the AMCU

The Administrative Board of the AMCU is usually made up of three state commissioners and is appointed at the meeting of the AMCU as a collective body in case the quorum for decision-making is not reached (for example by leave of absence, sickness of the state commissioners).

- a) An application for approval for concerted actions of business entities shall be submitted to the AMCU where:
 - participants of concerted actions are registered in different regions and operate in the markets covering the territory of more than one region of Ukraine,
 - concerted actions cover the territory of several regions of Ukraine,
 - a transnational corporation, an entity having its seat outside Ukraine, or an enterprise of strategic importance for the national economy and security acts as a participant of concerted actions.
- b) In all other cases, the application shall be submitted to a territorial office of the AMCU at the place of registration (activity) of the concerted action participants.

2.4. Application processing timeframes

An application shall be deemed accepted for consideration following expiry of 15 days from the date of its receipt, if during this time it is not returned due to non-compliance with the requirements established by

the AMCU preventing its processing.

An application for approval for concerted actions shall be processed within 3 months from the date of its acceptance.

An application for changes in the concerted actions cleared by the AMCU shall be considered within 30 days. At the same time, such changes are only allowed where the participants remain the same and the concerted actions do not spread to other commodity markets.

In case of detecting the grounds for the concerted action prohibition, the AMCU bodies shall initiate the respective case. In this case, the processing term shall not exceed 3 months from the receipt of all information necessary for processing the case.

Thus, the minimum period for obtaining approval for new concerted actions is 3.5 months, while the maximum period can exceed 6.5 months.

2.5. Decisions of the AMCU bodies

Based on the results of consideration of concerted actions or concentration cases, the AMCU bodies may decide:

- to grant approval for concerted actions;
- to refuse approval for concerted actions.

In case of detecting the grounds for the concerted action prohibition, the AMCU shall inform the concerted action participants about such grounds and give the concerted action participants 30 days so that they can

propose obligations that they are willing to assume in order to eliminate the negative impact of the concerted actions on competition and allow the AMCU bodies to grant approval for concerted actions. This term may be renewed upon request of a concerted action participant.

The obligations assumed by the concerted action participants should be proportional to the reasonable risks of the negative impact of the concerted actions concerned on competition, and the requirements for ensuring control over the performance of the obligations assumed by the concerted action participants should not be excessive.

Approval for concerted action may be granted for an indefinite or specified period of time, which as a rule should not exceed five years.

The concerted actions shall be carried out within a year from the date of the decision to grant approval for concerted actions, unless a longer term is specified in the decision. If the applicant fails to carry out the concerted actions or concentration within this term, the participants of the concerted actions or concentration must submit a new application for approval for concerted actions to the AMCU bodies.

2.6. Preliminary conclusions and clarifications of the AMCU

Taking into account that obtaining approval for concerted actions of business entities is a time-consuming process, in cases where there is a reasonable doubt that the creation and/or functioning of procurement groups may lead to prevention, elimination or restriction of com-

petition, it is expedient to apply to the AMCU not for approval for concerted actions, but rather for:

- preliminary conclusions regarding concerted actions of business entities, or
- conclusions as to classification of actions.

I. Preliminary conclusions

The preliminary conclusions shall establish whether or not the applicant must obtain approval of the AMCU for concerted actions, and in case such an approval is necessary, the chances for its obtaining or refusal.

The clarifications shall establish either compliance or non-compliance of the actions outlined in the application with provisions of the above Articles of the Competition Law.

The conclusions are issued solely on the basis of the information provided by the applicant. Therefore, if this information is incomplete or insufficient, there is a risk that the AMCU will not be able to draw appropriate conclusions. Applications for preliminary conclusions regarding concerted actions shall be considered within 1 month. Preliminary conclusions shall be issued in the form of a letter stating:

- whether or not the applicant must obtain approval for concerted actions;
- chances for obtaining approval for concerted actions;
- chances for refusal of approval for concerted actions; lack of information for drawing any conclusions.

At the same time, the preliminary conclusions do not replace approval for concerted actions. Therefore, should the AMCU conclude that the concerted actions in question are subject to approval, the applicant must submit the relevant application for approval to the AMCU bodies.

II. Recommendation clarifications

The AMCU or its administrative board may, on the basis of the information provided by the business entities, issue conclusions in the form of recommendation clarifications on the compliance of the business entities' actions with provisions of Articles 6 and 10 of the Competition Law.

These clarifications shall establish either compliance or non-compliance of the actions outlined in the application with provisions of the above Articles of the Competition Law, generally prohibiting anticompetitive concerted actions of business entities or prohibiting concerted actions that may be allowed but are carried out without prior approval.

Should the conclusions state that the concerted actions concerned do not violate the prohibitions provided for in part 4 of Article 6 and part 5 of Article 10 of the Competition Law, such actions may be implemented without the risk of incurring liability for violation of the laws on the economic competition protection.

Should the conclusions, however, state the opposite, i.e. that the respective concerted actions may lead to violations of the laws on the economic competition protection, such actions must be terminated or altered.

Since the conclusions as to classification of actions are issued solely on the basis of the applicant's information, the completeness and accuracy of such information are necessary to safeguard against possible risks.

The regulations do not establish specific timeframes for issuing the AMCU's conclusions as to classification of actions. However, in practice, the conclusions as to classification of actions are usually issued within one month after the AMCU receives the application.

2.7. Application and notification fees

Ukrainian competition law provides for the following application and notification fees:

a) Main proceedings

For considering an application for concerted action clearance in main proceedings, the AMCU shall charge a fee of 600 minimum non-taxable incomes (UAH 10,200, approx. USD 400).

If application for concerted action approval is refused by the AMCU, the fee shall not be refunded. The fees

are payable to the AMCU's account prior to filing an application.

Failure to submit to the AMCU or its territorial office a document confirming the fee payment shall be considered a ground for leaving the application without consideration for a time period set by the AMCU body or the head of its territorial office. In case of failure to pay the fee within the term set by the AMCU body or the head of its territorial office, the application shall remain without consideration, which does not deprive the applicant of the right to file another application with the same body.

b) Preliminary conclusions

For considering an application for preliminary conclusions as to concerted actions of business entities, the AMCU shall charge a fee of 320 minimum non-taxable incomes (UAH 5,440, approx. USD 200).

c) Conclusions as to classification of actions

For providing conclusions as to classification of actions under relevant laws, the AMCU shall charge a fee of 320 minimum non-taxable incomes (UAH 5,440, approx. USD 200).



3. Prohibition of concerted actions and ministerial approval

The Cabinet of Ministers of Ukraine may authorize concerted actions not authorized by the AMCU if the concerted action participants prove that the positive effects for the public interest outweigh the negative impact of the restriction of competition.

Approval may not be granted under any circumstances where:

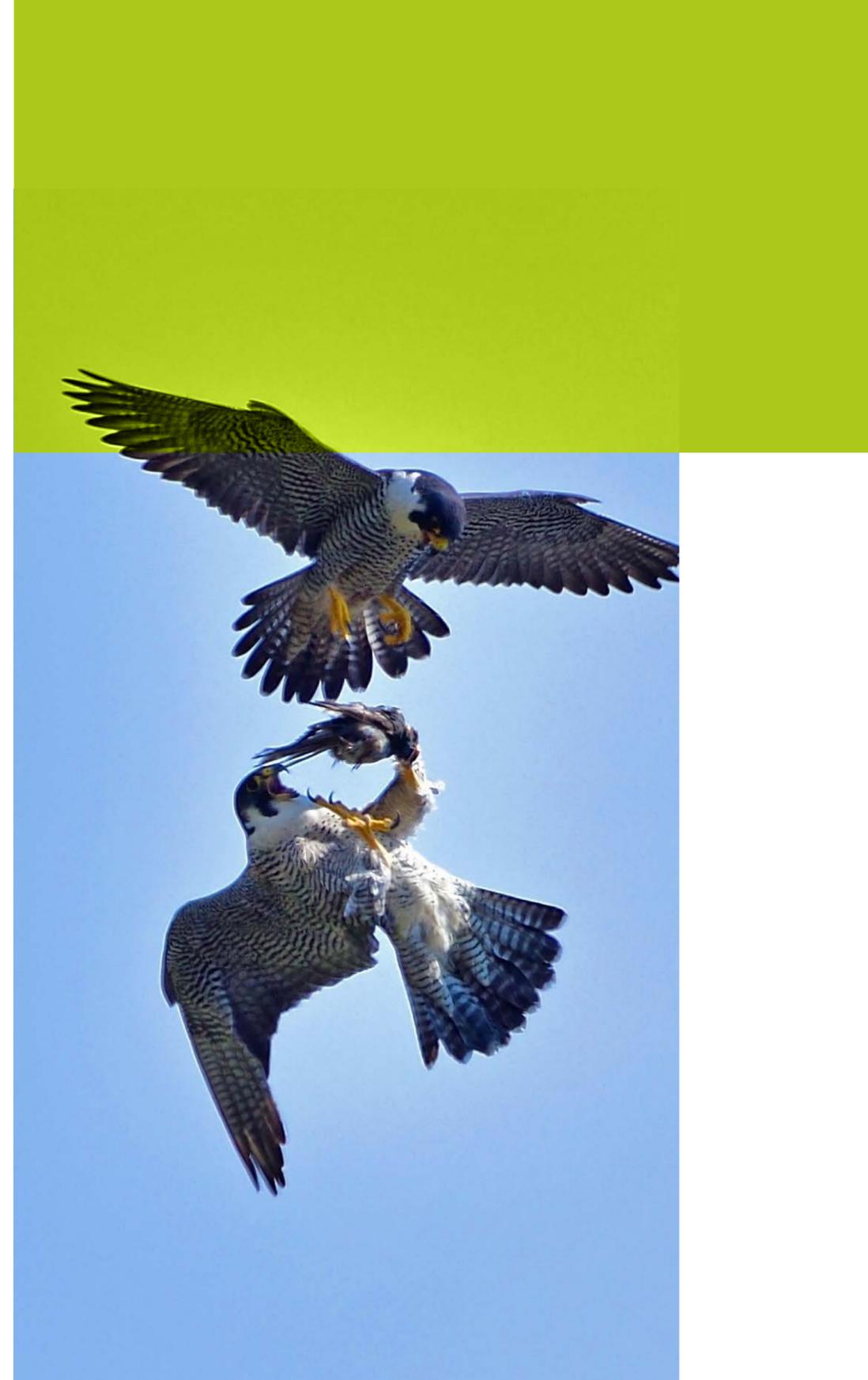
- concerted action participants apply restrictions that are not necessary for the implementation of concerted actions;
- the competition restriction poses a threat to the market economy system.

The concerted action participants may, within thirty days from the date when the decision on the concerted action prohibition was made by the AMCU, file an application for approval for the respective concerted actions with the Cabinet of Ministers of Ukraine.

The Cabinet of Ministers of Ukraine shall make a motivated decision to grant approval for concerted actions or to refuse such an approval.

The decision of the Cabinet of Ministers of Ukraine on granting approval for concerted actions may contain certain requirements and obligations to be performed by participants of concerted actions, including in relation to their taking certain actions. Such requirements and obligations may not be directed at long-term control over the concerted action participants' activities.

If the decision of the Cabinet of Ministers of Ukraine on granting approval for concerted actions becomes void or is declared invalid in the manner prescribed by law, the AMCU bodies shall take measures to restore the initial position or other measures eliminating or mitigating the negative impact of the concerted actions on competition.



4. Competition law violations

The implementation of anticompetitive concerted actions without obtaining approval of the AMCU bodies is considered a violation of the legislation on the protection of economic competition and entails liability in accordance with the law.

Violations of the legislation on the protection of economic competition in the form of concerted actions without approval of the AMCU bodies include in particular:

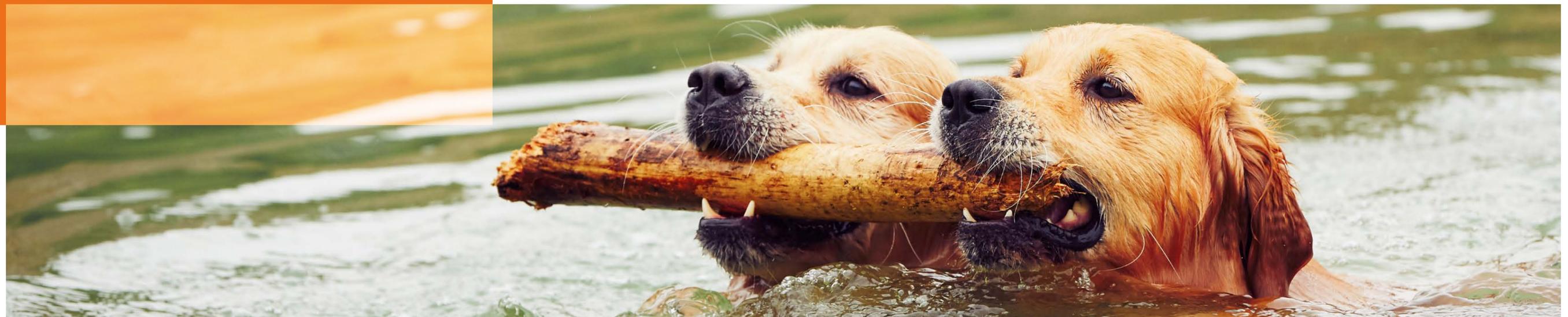
1. Conclusion by business entities of agreements in any form – from the moment of agreement conclusion.
2. Establishment of a business entity whose objective or result is the coordination of the competitive behavior between the business entities having established such a business entity or between them and the newly established business entity – from the moment of state registration of the newly established business entity.
3. Adoption by undertaking associations of de-

isions in any form – from the moment when the respective decision enters into force.

4. Any other coordinated behavior (actions, omissions) of business entities that have led or may lead to prevention, elimination or restriction of competition – from the beginning of such behavior.

If the AMCU has granted approval for concerted actions on the basis of the false information submitted by the applicant, the decision on granting approval may, within five years from the date of its adoption, be revised taking into account the newly discovered circumstances. Based on the review results, the AMCU may decide to:

- uphold the previous decision on granting approval for concerted actions;
- cancel the decision on granting approval for concerted actions in whole or in part and adopt a new decision;
- impose a fine in the manner prescribed by law.



5. Sanctions for competition law violations

If an undertaking fails to notify a transaction that is subject to approval by the AMCU, such a transaction shall be automatically considered a competition law violation. If the AMCU finds out about it, it may impose

finances on the buyer. Furthermore, the AMCU may also impose sanctions on the buyer for other competition law violations. The major violations and fines are listed below:

Violation	Fine
Implementation of concerted actions	A fine of up to ten percent of the undertaking's revenues (proceeds) from the sale of products (goods, works, services) for the last reporting year preceding the year in which the fine is imposed.
Implementation of concerted actions that are subject to merger control without approval of the AMCU, provided that such an approval must be obtained	In case of illegally obtained profit exceeding ten percent of the aforesaid revenues (proceeds), the fine shall not exceed the triple amount of illegally obtained profit. The illegally obtained profit can be determined by way of estimation. A fine of up to five percent of the undertaking's turnover for the last reporting year preceding the year in which the fine is imposed. If the undertaking has not generated any turnover in the last financial year or if it fails to submit information about the financial results at the request of the AMCU, a fine of up to 20,000 minimum non-taxable incomes (UAH 340,000, approx. USD 13,450) shall be imposed.
Submission of false information about concerted actions to the AMCU	A fine of up to one percent of the undertaking's total turnover for the last reporting year preceding the year in which the fine is imposed. If the undertaking has not generated any turnover in the last financial year or if it fails to submit information about the financial results at the request of the AMCU, a fine of up to 10,000 minimum non-taxable incomes (UAH 170,000, approx. USD 6,750) shall be imposed.
Implementation of a concentration that is subject to merger control without approval of the AMCU, provided that such an approval must be obtained	A fine of up to five percent of the undertaking's total turnover for the last reporting year preceding the year in which the fine is imposed. If the undertaking has not generated any turnover in the last financial year or if it fails to submit information about the financial results at the request of the AMCU, a fine of up to 20,000 minimum non-taxable incomes (UAH 340,000, approx. USD 13,450) shall be imposed.



It should be noted that the aggregate turnover of all legal entities and individuals belonging to the group shall be considered the turnover of the company.

Furthermore, the sanction calculation details are listed below:

- if an undertaking – a participant of concerted actions – is associated with other undertakings by relations of control, the calculation of the turnover generated in the last financial year shall also include the affiliated undertakings' turnover generated in the last financial year;
- if the AMCU finds out that the competition law violation was also caused by an affiliated party involvement, it may impose a fine on the group of companies involved in the violation;
- in case of newly established undertakings (within one year), turnover since their establishment until the date of the fine imposition shall be used for fine calculation purposes.

6. Fine proceedings

In case of a violation, the AMCU shall officially initiate fine proceedings. The fine proceedings cover all anti-trust violations provided for by the competition laws, including violations relating to concerted actions.

The fine proceedings consist of three important steps, in particular:

1. investigation and evidence collection,
2. preparation of a preliminary opinion,
3. adoption of a decision.

The cooperation between the undertakings engaged in concerted actions and the antitrust authorities is recommended at each step mentioned above, since this can generally lead to a significant reduction of fines.

6.1. Compensation for damages

In addition to imposing fines on the parties (buyer, target company, affiliated companies), the negative consequences of the concerted actions implemented without the respective approval can also be remedied by claims for damages.

Claims for damages caused to an affected person (a legal entity or an individual) as a result of concerted actions implemented without the respective approval can be filed with the economic court. It should be noted that the competition laws contain much stricter damage compensation provisions than the Civil Code and the Economic Code of Ukraine. If damages are proven in court, they must be paid in double.

6.2. Forced demerger

The AMCU may also include the concerted action participants in the list of companies with a dominant market position. As a result, business activities of such undertakings (including prices of their products, services, and works) will be subject to special control by the AMCU. If the AMCU finds out that the company is abusing its dominant market position, then it can adopt a decision on the forced demerger of the respective company.

6.3. Investigation

The AMCU has various means of revealing the concerted actions implemented without the respective approval, inter alia, through its own network of territorial offices; bodies of the State Prosecutor's Office and the Security Service; the cooperation with the fiscal authorities as well as using the information from the trade register.

Over the past few years, notifications of concerted actions filed by competitors have become a safe source of information on the concerted actions implemented without the respective approval. In particular, due to the fact that the notifying persons are protected by the provisions of the competition laws. Pursuant to the laws, the AMCU may not disclose the whistleblower's details to third parties. This is also one of the reasons why the number of preliminary investigations opened based on the information provided by competitors has risen sharply.

6.4. Statute of limitations

The statute of limitations for the competition law violations in the form of concerted actions implemented without the AMCU approval expires 5 years after the date of the concerted action termination. The statute of limitations for submitting false information about the concerted actions to the AMCU is 3 years.

The sanctions may not be imposed after the statute of limitations has expired. The statute of limitations shall be suspended for the fine proceedings duration.

6.5. Appealing against decisions of the AMCU

The AMCU decisions on the sanction imposition may be appealed to the Kyiv City Economic Court. An appeal may be filed within a two-month period from the date of receiving the decision. The term may not be renewed.

Appealing against the AMCU decisions to the economic court does not in principle lead to the automatic suspension of the decision implementation unless the respective economic court states otherwise in its order.



Our services

1. Preparing applications for concerted actions approval, other documents required for the AMCU positive decision (e.g. feasibility study, transaction structuring, proposals regarding the specifics of carrying out the transaction in accordance with Ukrainian laws, etc.).
2. Filing applications with the AMCU, the relevant processes supervision, in particular:
 - Drafting and filing additional documents, applications, statements, petitions;
 - Participating in the AMCU meetings regarding making decisions on concerted actions approval, etc.
3. Filing appeals against the AMCU decisions regarding the notified transactions, in particular:
 - with the Cabinet of Ministers of Ukraine;
 - with the Economic Court, Court of Appeal, Court of Cassation.
4. Preparing documents and applying for the AMCU preliminary conclusions on a specific case having characteristics of concerted actions.
5. Filing appeals against the AMCU decisions on approval of competitors' concerted actions if such an AMCU approval or a decision is unlawful.
6. Submitting information to the AMCU on transactions implemented by competitors if they failed to notify a transaction regarding the concerted actions or violated the transaction implementation procedure or concerted actions approval was refused, etc.



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