

UKRAINE

LAW OF UKRAINE

On Limitation of Monopolism and Prevention of Unfair Competition in Entrepreneurial Activities

The present Law shall define the legal grounds for limitation and forestalling of monopolism, for prevention of unfair competition in entrepreneurial activities, and for exercising State control over the observance of the antimonopoly legislation norms.

Section I

General provisions

Article 1. Terms defined

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

product denoting a product of activities (including work, services and securities) designed for sale;

market of a product (product market) denoting the sphere of circulation of a product having the same consumer value within which monopoly position is defined;

bodies of State power denoting ministries and other central bodies of executive power, bodies of executive power of the Autonomous Republic of the Crimea, State bodies which regulate both activities of economic entities being natural monopolies and securities markets, State bodies of privatisation, local bodies of executive power;

bodies of administrative and economic management and control denoting amalgamations of enterprises, other economic entities, public organisations when they fulfil functions of management and control within such powers of bodies of State power or bodies of local self-government that were delegated to them;

competition denoting the contest between entrepreneurs when their independent actions limit opportunities of each of them to influence general conditions of product sale on the market and stimulate production of such products that are needed by the consumer;

monopoly position denoting such a dominant position of an economic entity that enables it to restrict competition on the market of a particular product independently or jointly with other economic entities. Position of an economic entity shall be considered as a monopoly one if its share in the market of a particular product exceeds 35 per cent. Position of an economic entity whose share in the market of a particular product is less than 35 per cent may be defined as a monopoly one by a decision taken by the Antimonopoly Committee of Ukraine;

monopoly price denoting such a price that is set by an economic entity occupying monopoly position on the market and that results in restriction of competition or in violation of the consumer rights;

monopoly activities denoting actions (inactivity) of an economic entity (a group of economic entities) on condition that the economic entity (the group of economic entities) occupies monopoly position on the market with respect to production and sale of products as well as such actions (inactivity) of bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control that are directed towards prevention, essential restriction or removal of competition;

monopoly formation denoting such an enterprise, amalgamation or an economic society and other formation that occupies monopoly position on the market;

economic entity denoting such a legal person, irrespective of its organisation, legal and ownership forms, or such a natural person that is engaged in production, sale, and purchase of products or in other economic activities; it also denotes any legal or natural person which exercise control over economic entities, a group of economic entities if one or several of them exercise control over others. Bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control with respect to their activities associated with production, sale, purchase of products or with respect to other economic activities shall be considered as economic entities;

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

control denoting a decisive influence exerted by a legal or natural person on economic activities of an economic entity, in particular owing to: the right to own or use all the assets or their considerable part; the right ensuring a decisive influence on complement formation of, voting results, the decisions of managing bodies of an economic entity; conclusions of such agreements and contracts that enable to set conditions of economic activities, to give binding instructions or to perform functions of a managing body of an economic entity: occupation of the position of head, deputy head of an economic entity by the person occupying one or several of the mentioned positions in other economic entities; coincidence of more than half of members of a supervisory board, board of directors, other supervisory or executive bodies of an economic entity.

Article 2. Application of the present law

1. The present Law shall be applied to the relations in which economic entities take part.

2. The present Law shall not affect the relations resulting from the rights to intellectual property objects with the exception of the cases provided for by the present Law.

3. Laws of Ukraine, in comparison with the present Law, may provide for peculiarities in regulating relations associated with monopoly activities and unfair competition on financial and securities markets.

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

Section II

Abuse of monopoly position on the market.

Unlawful agreements. Discrimination against economic entities

Article 3. Definition of monopoly position

Monopoly position of economic entities on the market with respect to all kinds of capitalized products (industrial and technical production) and with respect to capitals (finances, securities, etc.) being in circulation shall be defined within the territory of Ukraine.

Monopoly position of economic entities on the market with respect to all kinds of consumer products and with respect to all kinds of work and services shall be defined by the Antimonopoly Committee of Ukraine, and its territorial offices within an administrative region or an autonomy (district, settlement).

Article 4. Abuse of monopoly position on the market

It shall be considered to constitute abuses of monopoly position:

imposition of such contract terms that create a disadvantage for contractors or imposition of such additional terms that have nothing in common with the subject of a contract, including imposition of a needless product on a contractor;

limitation or stoppage of production or products and their removal from circulation, which resulted or can result in creation or maintenance of deficit on the market or in setting monopoly prices;

partial or complete refusal to sell or purchase a product in the absence of alternative purchase or sales sources, which resulted or can result in creation or maintenance of deficit on the market or in setting monopoly prices;

other actions which resulted or can result in creation of barriers to entry into (withdrawal from) the market with respect to other economic entities;§

setting of such discriminatory prices (tariffs, rates) for one's own product that restrict rights of certain consumers;

setting of monopoly high prices (tariffs, rates) for one's own products, which resulted or can result in violation of the rights of consumers;

setting of monopoly low prices (tariffs, rates) for one's own products, which resulted or can result in restriction of competition.

Article 5. Anticompetitive concerted actions

Anticompetitive concerted actions shall be considered to constitute such concerted actions (agreements) that resulted or can result in:

setting (maintenance) of monopoly prices (tariffs), rebates, extra charges (additional payments), increases of prices;

distribution of markets on the principle of territory, assortment of products, volume of production sale or product purchase, or according to the circle of consumers, or according to other indications, which resulted or can result in their monopolization;

removal of sellers, buyers, and other economic entities from the market or restriction of their access into it.

Article 6. Discrimination against economic entities practised by bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control

1. It shall be considered to constitute discrimination against economic entities practised by bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control:

prohibition against establishment of new enterprises or other organisation forms of entrepreneurship in any sphere of activities as well as putting restrictions on being engaged in some activities, on production of particular kinds of products, which resulted or can result in restriction of competition;

compulsion of economic entities to join associations, concerns, interbranch, regional, and other amalgamations of enterprises, to practise a priority conclusion of contracts, and to provide a primary supply to a particular circle of consumers;

making decisions about centralized distribution of products, which resulted or can result in monopoly position on the market;

establishment of prohibition against sale of products from one region to the republic into another one;

giving particular economic entities such as fax and other privileges that place them in a privileged position with respect to other economic entities, which resulted or can result in monopolization of the market of a particular product;

restriction of the rights of economic entities to purchase and sell products;

establishment of prohibitions or limitations with respect to particular economic entities or groups of economic entities.

2. Conclusion of agreements between bodies of State power, bodies of local self-government, bodies of administrative and economic management and control, conclusion of agreements between those bodies and economic entities as well as their giving natural or legal persons powers to perform the actions provided for by item 1 of the present article shall also be considered to constitute discrimination against economic entities.

3. Exemptions from the provisions of the present article may be established by legislative acts of Ukraine for the purpose of ensuring national security, defence, public interests.

Section III

Unfair competition

Article 7. Unfair competition

Legal grounds for protection against unfair competition shall be defined by the Law of Ukraine on Protection against Unfair Competition.

Section IV

State control over the observance of antimonopoly legislation

Article 8. State policy in the sphere of limitation of monopolism in entrepreneurial activities

1. State policy in the sphere of limitation of monopolism in entrepreneurial activities, taking such measures concerning demonopolization of the economy, financial, material, technical, information, consultative, and other support of economic entities that favour development of competition shall be carried out by such bodies of State power, bodies of local self-government, bodies of administrative and economic management and control that are empowered to carry it out.

2. Demonopolization of the economy and development of competition in Ukraine shall be provided in accordance with the special programme elaborated by the Cabinet of Ministers of Ukraine and is approved by the Supreme Rada (Parliament) of Ukraine.

3. State control over the observance of the antimonopoly legislation, protection of interests of economic entities and consumers against violations of the antimonopoly legislation including protection against abuses of monopoly position and against unfair competition shall be exercised by the Antimonopoly Committee of Ukraine in accordance with its competence.

Article 9. Antimonopoly Committee of Ukraine

The structure, competence, organisation of activities, and accountability of the Antimonopoly Committee of Ukraine shall be defined by the Law of Ukraine on the Antimonopoly Committee of Ukraine.

Articles 10, 11, 12 are abrogated.

Article 13. Access to information

Economic entities, bodies of State power, bodies of local self-government, bodies of administrative and economic management and control as well as their officials – by order of State commissioners, heads of territorial offices of the Antimonopoly Committee of Ukraine – shall be obliged to provide documents,

written and oral explanations, other information, including restricted information, necessary to the Antimonopoly Committee of Ukraine and its territorial offices for carrying out the tasks provided for by legislation.

Article 14. Control over establishment, reorganisation (merger, annexation), liquidation of economic entities

To prevent monopoly position of particular economic entities on the market (monopolization of product markets), establishment, reorganization (merger annexation), liquidation of economic entities, establishment of associations, concerns, interbranch, regional, and other amalgamations of enterprises, transformation of bodies of State power, bodies of local self-government, bodies of administrative and economic management and control into the mentioned amalgamations, entry of one or several economic entities into amalgamations in the cases provided for by legislation shall be carried out on condition that consent of the Antimonopoly Committee of Ukraine is received.

Article 15. Control over acquisition or lease of property

Purchase acquisition – by other means, - receipt - for the purpose of management (use), -of the shares (stocks) as well as assets (property) in the form of integrated complexes of property of economic entities or of their structural subdivisions, lease of integrated complexes of property of economic entities or of their structural subdivisions shall be carried out by economic entities in the case provided for by legislation on condition that consent of the Antimonopoly Committee of Ukraine is received.

Article 16. Compulsory split-up of monopoly formations

1. In the cases when economic entities abuse their monopoly position on the market, the Antimonopoly Committee of Ukraine and its territorial offices shall have the right to adopt a decision about compulsory split-up of monopoly formations.

2. Compulsory split-up shall not be applied in the following cases:
if it is found impossible to make organizational or territorial separation of enterprises, structural subdivisions or structural units;

if there is a close technological connection of enterprises, structural subdivisions or structural units (the share of the inner turnover in the gross output of the enterprise (amalgamation, etc) accounts for less than 30 per cent).

3. A decision of the Antimonopoly Committee of Ukraine (its territorial office) on a compulsory split-up of enterprises (amalgamations, etc) shall be fulfilled within a fixed period which cannot be less than six months.

Reorganization of monopoly formation, subject to a compulsory split-up, shall be carried out at the discretion of the monopoly formation on condition that its monopoly position on the market is eliminated.

Article 17 and 18 are abrogated

Section V

Responsibility for violations of the antimonopoly legislation

Article 19. Imposition of fines on economic entities being legal person

Fines on economic entities being legal person shall be imposed by the Antimonopoly Committee of Ukraine for:

Commitment of the actions provided for by articles 4-6 of the present Law, evasion of fulfilment or a tardy fulfilment of decisions of the Antimonopoly Committee of Ukraine (its territorial office) on termination of violations of the Antimonopoly legislation, renewal of the initial state of affairs or change of agreements contradicting the present Law - to the amount of 5 per cent of the receipts from sale of production (products, work, services) got by the economic entity in the last account year preceding the year in which the fine is imposed;

establishment, reorganization (merger, annexation), liquidation of economic entities (including an economic society, association, concern or other amalgamation of enterprises); entry of one or several economic entities into an amalgamation; purchase, acquisition - by other means, - receipt - for the purpose of management (use), - of shares (stocks) as well as assets (property) in the form of integrated complexes of property of economic entities or of their structural subdivisions as well as lease of integrated complexes of property of economic entities or of their structural subdivisions without consent of the Antimonopoly Committee of Ukraine, administrative boards, State commissioners, and territorial offices of the Antimonopoly Committee of Ukraine if legislation provides for the necessity to receive that sort of consent - to the amount of 5 per cent of the receipt from sale of production (products, work, services) got by the economic entity in the last account year preceding the year in which the fine is imposed; lack of submission, a tardy submission of deliberately falsified information to the Antimonopoly Committee of Ukraine (its territorial office) – to the amount of 0.5 per cent of the receipts from sale of production (products, work, services) got by the economic entity in the last account year preceding the year in which the fines is imposed.

If it is impossible to calculate receipts of the economic entity or the receipts are absent, the fines mentioned in paragraph 2 and 3 of Part 1 of the present article shall be imposed to the amount of 10,000 tax-free minimum private citizen incomes, and the fines mentioned in paragraph 4 of Part 1 – to the amount of 200 tax-free minimum private citizen incomes.

If the economic entity worked less than a year, fines shall be calculated on the basis of the receipts got by the economic entity in the period preceding the violation.

Decisions about imposition of fines exceeding 1,000 tax-free minimum private citizen incomes shall be taken exclusively by the Antimonopoly Committee of Ukraine and administrative boards at their sittings.

Fifty per cent of fines shall be transferred to the State budget and 50 per cent of fines – to the special extrabudgetary fund established for the purpose of developing protecting competition.

Article 20. Administrative responsibility of officials and private citizens engaged in entrepreneurial activities

Officials of bodies of State power, bodies of local self-government, bodies of administrative and economic management and control, enterprises, institutions as well as private citizens engaged in entrepreneurial activities without creation of a legal person shall bear administrative responsibility according to legislation for:

commitment of the actions provided for by articles 4-6 of the present Law;
lack of submission, a tardy submission or submission of deliberately falsified information to the Antimonopoly Committee of Ukraine and its territorial offices;
evasion of fulfilment or a tardy fulfilment of decisions of the Antimonopoly Committee of Ukraine and its territory offices.
Fines shall be recovered in accordance with court procedure.

Article 21. Withdrawal of unlawfully got profit

Profit got unlawfully by economic entities as a result of violations of articles 4 and 5 of the present Law shall be recovered by a court of justice or a court of arbitration to the State budget.

Article 22. Reparation of damages

Damages caused by abuse of monopoly position, anticompetitive concerted actions, discrimination against economic entities by bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control shall be repaired in accordance with the procedure provided for by the civil legislation of Ukraine.

Section VI

Examination of cases and applications by the Antimonopoly Committee of Ukraine and appealing against its decisions

Article 23. Examination of cases on violations of the antimonopoly legislation

The Antimonopoly Committee of Ukraine, State commissioners, administrative boards, and territorial offices of the Committee, within their competence, shall examine cases on violations of the antimonopoly legislation and proceeding from the examination results shall take decisions in accordance with the procedure provided for by legislation.

Article 23¹. Examination of applications for giving consent to establishment, reorganisation and liquidation of economic entities

The Antimonopoly Committee of Ukraine, administrative boards, State commissioners, and territorial offices of the Antimonopoly Committee of Ukraine, within their competence, shall examine applications for giving their consent to establishment, reorganisation (merger, annexation), liquidation of economic entities (including an economic society, association, concern or other amalgamation of enterprises); entry of one or several economic entities into an amalgamation; purchase, acquisition - by other means, - receipt – for the purpose of management (use), - of shares (stocks) as well as assets (property) in the form of integrated complexes of property of economic entities or of their structural subdivisions and proceedings from the examination results shall take decisions in accordance with the procedure provided for by legislation.

Article 23². Duty on submission of an application for giving consent to establishment, reorganisation, and liquidation of economic entities

A duty shall be paid on submission of an application for giving consent to establishment, reorganisation (merger, annexation), liquidation of economic entities (including an economic society, association, concern or other amalgamation of enterprises); entry of one or several economic entities into an amalgamation; purchase, acquisition – by other means – receipt – for the purpose of management (use), - of shares (stock) as well as assets (property) in the form of as lease of integrated complexes of property of economic entities or of their structural subdivisions.

Amounts of the mentioned duties shall be distributed at the following ratio: 50 per cent of the amounts of the duties shall be transferred to the State budget and 50 per cent – to the State body for the purpose of reimbursing its expenses incurred as a result of examination of the application, making examination by experts, etc.

The list of duties, their amounts, the periods and procedure of payment shall be defined by the Cabinet of Ministers of Ukraine.

Article 24. Procedure of appealing against decisions of the Antimonopoly Committee of Ukraine

1. In cases of disagreement with decisions of the Antimonopoly Committee of Ukraine and its territorial offices, economic entities, bodies of State power, bodies of local self-government, and bodies of administrative and economic management and control as well as other interested persons shall have the right to apply to a court of justice or a court of arbitration with an application for annulment of or making complete or partial changes in the decisions of the Antimonopoly Committee of Ukraine and its territorial offices.

2. Submission of an application shall not suspend fulfilment of decisions for the period of case examination in a court of justice or a court of arbitration unless

the court of justice or the court of arbitration unless the court of justice or the court of arbitration suspended the mentioned acts.

3. Damages caused by unlawful decisions of the Antimonopoly Committee of Ukraine and its territorial offices shall be repaired at the expense of the State budget irrespective of the blame borne by specific officials of the Antimonopoly Committee of Ukraine and its territorial offices.

Article 25. Procedure of fulfilling decisions of the Antimonopoly Committee of Ukraine

1. Decisions of the Antimonopoly Committee of Ukraine and its territorial offices shall be fulfilled within the periods provided for by the decisions

2. Economic entities upon whom the Antimonopoly Committee of Ukraine imposed fines shall pay them within a 30-day period since the date of receipt of the decision about imposition of the fine. An additional fine equal to 1.5 per cent of the original fine shall be recovered for everyday of the delay in payment of the original fine.

3. If an economic entity refuses to pay the original and additional fines, they shall be recovered on the basis of a decision taken by a court of justice or a court of arbitration.

4. The Antimonopoly Committee of Ukraine shall have the right to postpone payment of a fine proceeding from an application submitted by the economic entity upon which the fine was imposed.

LAW OF UKRAINE
ON PROTECTION AGAINST UNFAIR COMPETITION

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

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

Chapter I

General Provisions

Article 1. Unfair competition

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

In particular, actions stipulated by Chapters 2-4 of this Law shall be qualified as unfair competition.

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

Article 2. Application of the Law

This Law shall apply to relations involving economic entities (entrepreneurs), their associations, bodies of State power, citizens, legal persons and their associations not being economic entities (entrepreneurs) in conjunction with unfair competition, including actions made by them outside Ukraine, provided these actions have negative effect on competition in its territory.

This Law shall not apply to relations involving the said entities if their actions have consequences only outside Ukraine, unless otherwise provided for by an international treaty to which Ukraine is a party.

Article 3. Legislation of Ukraine on protection against unfair competition

Relations in conjunction with protection against unfair competition shall be governed by this Law, the Law of Ukraine "On Limitation of Monopolism and Banning of Unfair Competition in Entrepreneurial Activities", the Law of Ukraine "On the Antimonopoly Committee of Ukraine", the Law of Ukraine "On Foreign Economic Activities", and by other legislative acts issued as per laws or resolutions of the Supreme Rada of Ukraine.²

² Supreme Rada of Ukraine is the Parliament of Ukraine

Chapter II

Unlawful Use of an Economic Entity's (Entrepreneur's) Business Reputation

Article 4. Unlawful use of others' trademarks, advertising material, and packing

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

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

Article 5. Unlawful use of goods made by other manufacturers

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

Article 6. Copying of outward appearance of goods

Copying of outward appearance of goods shall be understood as making outwardly exact replicas of goods belonging to other economic entities (entrepreneurs) and launching them into economic circulation without indicating the manufacturer of copies, which can be confusing in regard to the activities of those other economic entities (entrepreneurs).

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

This article shall not apply to goods being protected as objects of intellectual property.

Article 7. Comparative advertising

Comparative advertising shall be understood as advertising which includes comparison with goods, works, and services or activities of different economic entities (entrepreneurs).

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

Chapter III

Obstructing Other Entities (Entrepreneurs') Business in the Course of Competition and Gaining Unlawful Advantage in Competition

Article 8. Discrediting an economic entity (entrepreneurs)

Discrediting an economic entity (entrepreneur) shall be understood as spreading any form of untruthful, inaccurate or incomplete information about this entity or entrepreneur or their (his) activities which has damaged or could damage (his) business reputation.

Article 9. Sales and purchase of goods, carrying out works, and rendering services with compulsory assortment

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

Article 10. Instigating boycott of an economic entity (entrepreneur)

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

Article 11. Instigating an economic entity (entrepreneur) to abrogate contract with a competitor

Instigating supplies to discriminate against buyers (customers) shall be understood as the buyer's (customer's) competitor's actions aimed at instigating – directly or via a go-between – supplier to give the buyer's (customer's) competitors certain unjustifiable advantages over the buyer (customer).

Article 12. Instigating an economic entity (entrepreneur) to abrogate contract with a competitor

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

Article 13. Bribing the supplier's employee

Bribing the supplier's employee shall be understood as the buyer's (customer's) competitor given or offering this employee – directly or via a go-between – material values, property or non-property benefits in return for that employee's improper

fulfilment or non-fulfilment of his duty ensuing from or in conjunction with the contract between the supplier and the buyer, concerning delivery of goods, carrying out works or rendering services, which has caused or could cause this competitor to receive certain advantages over the buyer (customer).

Any other person being under authority to make decisions on the supplier's behalf on delivery of goods, carrying out works or rendering services, and thus influence the supplier, or being otherwise involved with the supplier shall be placed on the same footing as that supplier's employee.

Article 14. Bribing the buyer's (customer's) employee

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

Any other person being under the authority to make decisions on the buyer's behalf on purchase of goods, works or services, and thus influence the buyer, or being otherwise involved with the buyer shall be placed on the same footing as that buyer's employee.

Article 15. Gaining unlawful advantage in competition

Gaining unlawful advantage in competition shall be understood as gaining the advantage over another economic entity (entrepreneur) by breaching any of the laws currently in effect and reaffirmed by decisions made by a competent authority.

Chapter IV

Unlawful Collection, Disclosure, and Use of Commercial Secrets

Article 16. Unlawful collection of commercial secrets

Unlawful collection of commercial secrets shall be understood as illegally obtaining data qualified under legislation of Ukraine as confidential commercial information if by doing so an economic entity (entrepreneur) has been or could be damaged.

Article 17. Disclosure of commercial secrets

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

Article 18. Instigation to disclose commercial secrets

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

Article 19. Unlawful use of commercial secrets

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

Chapter V

Responsibility for Unfair Competition

Article 20. Types of responsibility

Committing acts of unfair competition as envisaged by this Law shall entail penalties imposed by the Antimonopoly Committee of Ukraine, as well as civil liability and criminal prosecution as provided by legislation.

Article 21. Penalties imposed on economic entities being legal persons and associations thereof

Acts of unfair competition, as envisaged by this Law, committed by economic entities, legal persons, and associations thereof, shall entail penalties imposed by the Antimonopoly Committee of Ukraine and its territorial offices in amounts of up to 3 per cent of the economic entity's proceeds from the sales of goods, works, and services over the fiscal year preceding the year in which this penalty was imposed.

If such proceeds are impossible to compute, or in the absence of such proceeds, penalties indicated in paragraph 1 hereinabove shall be imposed in amounts of up to 5,000 tax-free minimum citizen's income.

Article 22. Penalties imposed on legal persons, associations thereof, and citizens' associations not being legal persons

Acts of unfair competition, as envisaged by this Law, committed by legal persons, associations thereof, and by citizens' associations not being legal persons shall entail penalties imposed by the Antimonopoly Committee of Ukraine and its territorial offices in amounts of up to 2,000 tax-free minimum citizens' incomes.

Article 23. Administrative responsibility of citizens

Acts of unfair competition, as envisaged by this Law, committed by citizens engaged in entrepreneurial activities without forming legal persons, shall result in administrative liability as provided by legislation.

Acts of unfair competition, as envisaged by this Law, committed by citizens in the interest of a third party, these citizens not being engaged in entrepreneurial activities, shall entail administrative penalties in keeping with legally set procedures.

Article 24. Restitution

Damage caused by actions qualified by this Law as unfair competition shall be indemnified as per claims by the interested parties in keeping with procedures established by the civil legislation of Ukraine.

Article 25. Confiscation of unlawfully labelled goods and duplicated goods originating from a different economic entity (entrepreneur)

On establishing unlawful use of others' trademarks, advertising material, and/or packing, as set forth by article 4 hereinbefore, or in discovering duplicated goods envisaged by article 6 hereinbefore, the interested party may bring the issue before the Antimonopoly Committee of Ukraine or any of its territorial offices, requesting confiscation of unlawfully labelled goods or duplicated goods originally made by a different economic entity (entrepreneur) from both the manufacturer and seller.

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

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

Article 26. Refutation of untruthful, inaccurate or incomplete data

On discovering that an economic entity (entrepreneur) has been discredited, the Antimonopoly Committee of Ukraine and/or its territorial offices shall have the right to demand official retraction, by the guilty party and that party's own cost, of such untruthful, inaccurate or incomplete information, within a term and in a manner determined by law or by a decision passed in this case.

Chapter VI

LEGAL PRINCIPLES OF PROTECTION AGAINST UNFAIR COMPETITION

Article 27. Procedural principles of handling unfair competition cases by the Antimonopoly Committee of Ukraine and its territorial offices

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

Article 28. Term of statement of claim

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

Article 29. Means of securing the implementation of decision made by the Antimonopoly Committee of Ukraine and its territorial offices

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

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

- forbidding a person (respondent) to perform certain actions if there are signs of transgression in that person's conduct;
- seizing property or sums in the respondent's possession

Such rulings may be appealed to a court of law or arbitration in keeping with procedures set forth by article 32 hereinafter, within 15 days from the date of receipt of a copy of the ruling.

The respondent, should the case be closed for lack of evidence, may, in keeping with procedures set by the laws of Ukraine, exact from the claimant damage in the amount of losses inflicted on the respondent when securing the implementation of the ruling.

Article 30. Decisions made by the Antimonopoly Committee of Ukraine and its territorial offices

The Antimonopoly Committee of Ukraine and its territorial offices, when handling unfair competition cases, shall make decisions to be complied with under all conditions, namely on:

- recognizing the fact of unfair competition;
- terminating unfair competition;
- ordering official retraction of untruthful, inaccurate information, to be made by the guilty party at its own cost;
- imposing penalties;
- confiscating unlawfully labelled goods or duplicated goods originally made by a different economic entity (entrepreneur);
- annulling or overriding unlawful acts and abrogating contracts and made by central or local bodies of State executive power, and executive bodies of local self-government.

Decisions imposing penalties in amounts surpassing 400 tax-free minimum citizens' incomes shall be the sole prerogative of the Antimonopoly Committee of Ukraine, each to be passed at a sitting thereof.

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

Article 31. Implementation procedures for decisions on penalties

A transgressor on whom a penalty is imposed shall pay it within 30 days from the date of receipt of the ruling on the penalty, unless otherwise instructed by the ruling.

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

If a transgressor refuses to pay a fine, the Antimonopoly Committee or any of its territorial offices shall recover this fine in an indisputable mode.

Penalties collected shall be distributed as follows: 50 per cent shall be transferred to the State budget of Ukraine, 25 per cent to the budget of the Autonomous Republic of Crimea and to local budgets, and 25 per cent to the State body imposing the penalty, to help create scientific, material, technical, and database on which to develop and protect competition.

Article 32. Contesting decisions of the Antimonopoly Committee of Ukraine and its territorial offices

Decisions made by the Antimonopoly Committee in Ukraine and its territorial offices in regard to cases on unfair competition shall be appealed, within 30 days from the date of receipt of a copy of the court ruling, to the Supreme Court of the Autonomous Republic of Crimea, as well as to regional courts, the city courts of Kyiv and Sevastopol, the Arbitration Court of the Autonomous Republic of Crimea, regional courts of arbitration and those of Kyiv and Sevastopol.

Article 33. Rules of professional ethics

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

The Rules of Professional Ethics in Competition may apply when making contracts and drawing up constituent and other documents binding on economic entities (entrepreneurs).