**Unofficial translation**

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# TYPICAL REQUIREMENTS
## to vertical concerted actions of undertakings regarding the supply and use of goods

## I. General provisions

1. These Typical requirements, developed pursuant to Part 2 of Article 11 of the Law of Ukraine "On Protection of Economic Competition" (hereinafter - the Law), set out the requirements for concerted actions of undertakings regarding the supply and use of goods through bilateral or multilateral agreements (contracts).

2. The terms used in these Typical requirements shall have the following meanings:

active sales - sales conducted through the seller’s active search for individual customers.

vertical restraints - competition restrictions provided for in Article 6 of the Law, which arise from vertical concerted actions between undertakings.

vertical concerted actions of undertakings regarding the supply and use of goods - concerted actions involving two or more undertakings that, within the scope of such concerted actions, operate at different levels of the production or supply chain, and where the participants may purchase, sell, or resell specific goods (hereinafter - vertical concerted actions).

Trust agreements or commercial intermediation (agency activity) shall not be recognized as vertical concerted actions if the attorney-in-fact (commercial agent) bears no or only insignificant commercial and/or financial risks in connection with such activities.

Trust agreements or commercial intermediation (agency activity) shall be recognized as vertical concerted actions if the attorney-in-fact (commercial agent) bears significant commercial and/or financial risks in connection with such activities, particularly if the agent meets at least one of the following conditions:

bears the costs of supplying/purchasing goods (except for transport costs, provided they are reimbursed by the undertaking represented by the attorney-in-fact or commercial agent);

is obligated to bear the costs of advertising the undertaking they represent;

stores goods of the represented undertaking at their own expense or risk (excluding the attorney-in-fact's or agent’s responsibility for loss, shortage, or damage of such goods);

provides repair services or warranty maintenance at their own expense after the sale of the goods;

bears special costs for equipment, premises, or staff training (except when such costs are fully reimbursed by the undertaking represented by the attorney-in-fact or commercial agent);

takes responsibility before third parties for harm caused to consumers by sold goods (except where such responsibility is imposed on the attorney-in-fact or commercial agent by law);

takes responsibility for buyers' inability to pay for the goods (except when the attorney-in-fact or commercial agent is responsible for their own negligence or inaction);

bears other expenses and risks in connection with actions that must be taken, in accordance with the requirements of the undertaking they represent, in the same commodity market (except where such costs are fully reimbursed by the undertaking represented by the attorney-in-fact or commercial agent).

selective distribution system - a system under which the supplier undertakes to sell the contractual goods directly or indirectly only to buyers selected on the basis of specific criteria, and where these buyers undertake not to sell the contractual goods to customers not designated by the supplier as participants in this selective distribution system, within the territory designated by the supplier for the functioning of this system.

exclusive supply - a system under which the supplier agrees to sell contractual goods only to the specified buyer within a defined territory.

exclusive group of customers - a group of customers to whom the supplier allows the sale of contractual goods only by a specified buyer or prohibits the sale of such goods to any buyer.

exclusive territory - a territory within which the supplier allows the sale of contractual goods only by a specified buyer or prohibits the sale to any buyer.

customer - an undertaking that is not a party to the vertical concerted practices but acquires contractual goods from a buyer who is a participant in the vertical concerted practices.

non-compete obligation - any direct or indirect obligation of the buyer not to produce, acquire, sell, or resell goods that compete with the contractual goods, or any direct or indirect obligation of the buyer to acquire from the supplier or another undertaking designated by the supplier more than 80 percent of all contractual goods and their relevant substitutes that the buyer purchases, calculated based on the value of the relevant contractual goods or their substitutes, or (in cases of established business practices) the volume of the buyer's purchases in the previous calendar year.

competing undertaking - an undertaking that operates in the same commodity market as a participant in the vertical concerted actions, or that would have had the real possibility, in the absence of the vertical concerted actions, of entering the relevant market within a short period of time and making additional investments or reallocating funds in response to a slight but sustained price increase for the contractual goods.

contractual goods - goods that are the subject of purchase, sale, or resale within the scope of the vertical concerted actions of undertakings.

passive sales - sales conducted without active efforts by the buyer to seek individual customers.

buyer - includes, in particular, undertakings that, within the scope of vertical concerted actions, sell goods on behalf of other undertakings (except in cases of trust agreements or commercial intermediation (agency activity), which are not recognized as vertical concerted actions).

Supplier - an undertaking that, within the scope of vertical concerted actions, sells contractual goods to buyers.

The terms "undertaking", "commodity market", "goods", and "association" are used in the meanings defined in Article 1 of the Law.

The term "know-how" is used in the meaning defined in Article 1 of the Law of Ukraine "On state regulation of activities in the field of technology transfer."

The terms "commercial intermediation (agency activity)," "commercial agent," and "undertaking represented by a commercial agent" are used in the meanings defined in Articles 295 and 297 of the Commercial Code of Ukraine.

The terms "contractor" and "subcontractor" are used in the meanings defined in Articles 837 and 838 of the Civil Code of Ukraine.

## II. Permitted vertical concerted actions

1. Vertical concerted actions that contain vertical restraints and meet the following conditions are permitted and do not require the authorization of the Antimonopoly Committee of Ukraine in accordance with Part 1 of Article 10 of the Law:

1) if the supplier's market share in the market where it sells the contract goods does not exceed 30 percent, and the buyer's market share in the market where it purchases the contract goods does not exceed 30 percent. In this case:

for the purposes of these Typical requirements, in cases of multilateral vertical concerted actions where an undertaking purchases the contract goods from one participant in the agreement and sells them to another participant, the market share of such an undertaking in the market for the contract goods should not exceed the threshold established in this subclause for both the supplier and the buyer;

the supplier’s market share in the market for homogeneous goods is calculated based on the volume of market sales, while the buyer’s market share is calculated based on the volume of purchases in physical terms. The supplier’s market share in the market for heterogeneous goods is calculated based on the value of market sales, while the buyer’s market share is calculated based on the value of purchases in monetary terms. In the absence of data on the volume (value) of market sales or purchases, the market shares of the relevant undertakings may be determined using calculations based on other market information, including sales and purchase volumes in the market;

market shares are calculated based on data from the calendar year preceding the year in which the calculation is made;

the supplier's market share includes goods supplied to buyers connected to the supplier by the relations of control, with the purpose of further resale;

if the supplier's or buyer's market share on the market where the contract goods are sold, which initially did not exceed 30 percent, subsequently exceeds this indicator to a maximum of 35 percent, the provisions of the first indent of this clause shall continue to apply to such vertical concerted actions for two years after the year in which the 30 percent market share was first exceeded;

if the market share of the supplier or buyer, which initially did not exceed 30 percent, subsequently exceeds 35 percent, the provisions of the first indent of this clause shall continue to apply to such vertical concerted actions for one year after the year in which the threshold of 35 percent was first exceeded;

the extension of the provisions of the first indent of this clause, as provided in the sixth and seventh indents of subclause 1 of this clause, cannot be combined in such a way that their total duration exceeds two calendar years.

In compliance with the conditions of the first indent of subclause 1 of this clause, the provisions of the first indent of this clause apply to:

vertical concerted actions between an association of undertakings and its members or between such an association and its suppliers, if all members of such an association are retailers of goods, and the association does not include any undertaking whose turnover in Ukraine (excluding taxes, duties, and other mandatory payments), taking into account control relations, exceeded the amount equivalent to 25 million euros in the last financial year, as determined by the official exchange rate set by the National Bank of Ukraine on the last day of the financial year.

The provisions of the first indent of this clause remain valid if the specified turnover threshold is exceeded during any two consecutive years, but not by more than 10 percent.

The provisions of the first indent of this clause do not apply to horizontal concerted actions between members of an association of undertakings or to decisions made by such an association.

In compliance with the conditions of the first indent of subclause 1 of this clause, the provisions of the first indent of this clause apply to:

vertical concerted actions that include provisions for the buyer's use of or access to intellectual property rights, provided that:

such provisions are not the primary subject of the specified agreements and are directly related to the buyer's use, sale, or resale of goods, or to their customers' use of such goods;

the provisions of concerted actions in relation to contractual goods do not contain restrictions on competition in respect of the same subject matter as restrictions on competition to which the provisions of this clause do not otherwise apply;

2) vertical concerted actions between a contractor and a subcontractor, where the subcontractor provides the production of contract goods exclusively for the contractor if the contractor supplies the subcontractor with the technologies or equipment necessary for the subcontractor's production of such goods, except where the subcontractor is restricted from conducting its own research and development or from producing goods for third parties.

2. Section 1 of this chapter shall not apply to:

1) vertical concerted actions entered into between competing undertakings.

An exception to the provisions of the first indent of clause 2 of this chapter and the first indent of this subclause shall be made for vertical concerted actions between competing undertakings where the supplier is not simultaneously the purchaser of its purchaser, and the purchaser is not the supplier of its supplier, provided that one of the following conditions is met:

the supplier simultaneously produces and sells the contract goods and goods that form a single market with the contract goods, while the purchaser does not produce such goods;

the supplier sells goods at several levels of trade, and the purchaser sells goods at the retail level and does not compete with the supplier at the levels of trade where it purchases the contract goods;

2) vertical concerted actions that contain hard-core vertical restraints, specifically those that directly or indirectly, independently or in conjunction with other factors over which the parties to such agreements exert decisive influence, have as their object:

restricting the buyer's ability to determine the selling price of the contract goods, except for actions by the supplier to establish a maximum or recommended selling price, provided that this does not result in the establishment of fixed or minimum selling prices due to pressure from one of the parties to the agreement or incentives offered by such a party;

restricting the territory or group of customers to whom the buyer may sell the contract goods, except for restrictions concerning the location of the buyer.

An exception to the provisions of the first indent of clause 2 of this chapter and the first, third indents of this subclause shall apply to agreements that impose restrictions solely on:

active sales by the buyer of the contract goods to an exclusive group of customers or within an exclusive territory where the supplier has reserved the exclusive right to sell the goods or has granted this right to another undertaking, provided that such a restriction does not lead to a reduction in the volume of sales of the relevant goods by the customers of the buyer;

sales of goods to end-users by the buyer who operates at the wholesale level;

sales of goods by participants in a selective distribution system to undertakings to whom the supplier has not granted the right to resell the goods in the territory designated by the supplier for the operation of this distribution system;

The ability of the buyer to sell components of a product supplied for the assembly of that product to customers who will use them to manufacture products similar to those produced by the supplier.

The provisions of clause 1 of this chapter shall also not apply to agreements that directly or indirectly, independently or in conjunction with other factors over which the parties to such agreements exert decisive influence, contain restrictions on:

active and passive sales of goods to end-users by participants in a selective distribution system operating in the retail market.

An exception to the provisions of the ninth and tenth indents of this subclause shall apply to agreements that provide for the possibility of prohibiting a participant in a selective distribution system from operating from a location not authorized for that purpose.

the provisions of clause 1 of this chapter shall also not apply to agreements that directly or indirectly, independently or in conjunction with other factors over which the parties to such agreements exert decisive influence, contain restrictions on:

cross-supplies between buyers who are participants in a selective distribution system, including buyers operating at different levels of trade;

in an agreement (contract) between a supplier of product components and a buyer who assembles them, the supplier's ability to sell product components as spare parts to end users or undertakings that provide repair or other maintenance services for the relevant products and to whom the buyer has not entrusted the provision of such services in relation to its goods;

3) any direct or indirect non-compete obligation, the duration of which is indefinite or exceeds 5 years.

A non-compete obligation that is automatically extended beyond 5 years is considered to be concluded for an indefinite period.

An exception to the provisions of the first indent of clause 2 of this chapter and the first indent of this subclause applies in cases where the non-compete obligation concerns the sale by the buyer of contract goods in premises and/or on territory owned by the supplier or leased by the supplier from third parties not related to the buyer, provided that the duration of the non-compete obligation does not exceed the period during which the buyer occupies these premises and/or territory;

4) any direct or indirect obligation of the buyer not to produce, purchase, sell, or resell goods after the termination of the agreement (contract).

An exception to the provisions of the first indent of clause 2 of this chapter and the first indent of this subclause applies to obligations that meet the following conditions:

the obligation concerns goods that form a single market with the contract goods;

the obligation applies only to the premises and/or territory where the buyer operated during the term of the agreement (contract) (vertical concerted actions);

the obligation is an integral part of the protection of know-how transferred by the supplier to the buyer;

the duration of the obligation does not exceed one year after the termination of the agreement (contract) (vertical concerted actions).

An exception to the provisions of clause 2 of this chapter applies to the establishment of indefinite obligations regarding the use and disclosure of know-how that has not become generally known.

5) any direct or indirect obligation of a participant in a selective distribution system not to sell goods that are marketed under the trademarks of specific undertakings that are competitors of the supplier.

## III. Non-application of the provisions of the Typical requirements

1. If parallel (unrelated) networks of similar vertical restraints cover more than 50 percent of a particular market, the Antimonopoly Committee of Ukraine may issue an order on the non-application of the provisions of clause 1, Chapter II of these Typical requirements that contain specific restraints concerning this market, except for agreements that were in effect at the time of issuance of such an order.

2. This order shall be published within 3 working days after its issuance.