

**APPROVED  
Order of the  
of the Antimonopoly  
Committee of Ukraine  
15.08.2012 № 557-p**

**Registered at the Ministry of  
Justice of Ukraine  
September 5, 2012  
under № 1537/21849**

**TYPICAL REQUIREMENTS  
to the concerted actions of undertakings in relation to joint research and/or development  
activities, compliance with which allows to carry out these concerted actions without the  
permission of the Antimonopoly Committee of Ukraine**

**I. General provisions**

1. These Typical requirements are developed in accordance with the provisions of Articles 10 and 11 of the Law of Ukraine "On Protection of Economic Competition" (hereinafter - the Law) and establish requirements for concerted actions of undertakings regarding joint research and/or experimental development works, which, if met, allow such coordinated actions to be permitted without requiring permission from the Antimonopoly Committee of Ukraine pursuant to the first part of Article 10 of the Law.

2. These Typical requirements apply to the coordinated actions of undertakings regarding joint research and/or experimental development works that do not fall under the exemptions outlined in Chapter 2 of the Typical requirements for concerted actions of undertakings for general exemption from the prior permission by the Antimonopoly Committee of Ukraine for concerted actions of undertakings, approved by the resolution of the Antimonopoly Committee of Ukraine as of February 12, 2002, No. 27-p, registered at the Ministry of Justice of Ukraine on March 7, 2002, under No. 239/6527.

3. Concerted actions of undertakings regarding joint research and/or experimental development works are horizontal concerted actions of undertakings that involve research or experimental activities, including experimental production, technical testing of products or technological processes, creation of necessary equipment, and acquisition of intellectual property rights on the results (including cases where one or more participants in such coordinated actions do not directly engage in the specified activities but only finance them), as a result of which they contribute to the improvement of production, technical-technological, and economic development, and thus are permitted pursuant to Article 10 of the Law of Ukraine "On Protection of Economic Competition," provided that the conditions for carrying out such actions do not lead to significant restriction of competition in the entire market or in a substantial part of it.

4. The procedure for calculating the indicators of the participants in the concerted actions, the undertakings that include the participants of the concerted actions, used in these Typical requirements, as well as its specifics concerning certain categories of undertakings, are established by the Regulation on the procedure for submitting applications to the Antimonopoly

Committee of Ukraine for permission of concerted actions of undertakings (Regulation on concerted actions), approved by the resolution of the Antimonopoly Committee of Ukraine as of February 12, 2002, No. 26-p, registered at the Ministry of Justice of Ukraine on March 7, 2002, under No. 238/6526, and by clauses 4.2, 4.3 of Chapter 4 of the Typical requirements for concerted actions of undertakings for general exemption from prior permission by the Antimonopoly Committee of Ukraine for concerted actions of undertakings, approved by the resolution of the Antimonopoly Committee of Ukraine as of February 12, 2002, No. 27-p, registered at the Ministry of Justice of Ukraine on March 7, 2002, under No. 239/6527.

5. The provisions of these Typical requirements do not limit the right of the participants in the coordinated actions to apply to the Antimonopoly Committee of Ukraine for permission of the relevant actions pursuant to Article 10 of the Law of Ukraine "On Protection of Economic Competition."

## **II. Definitions**

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

Contract process – a technological process that is the result of research and/or experimental development works.

Contract products – goods that are the result of research and/or experimental development works, or that are produced or provided using contract processes.

Research and/or experimental development works (hereinafter - R&D) – research or experimental activities that include experimental production, technical testing of products or technological processes, the creation of necessary equipment, and the acquisition of intellectual property rights on the results.

R&D is considered joint (joint R&D) if:

a) The work:

is carried out by a jointly created team, enterprise, institution, or organization, or

is jointly entrusted to a third party, or

is divided between the parties through specialization in R&D or production;

b) The parties cooperate in any way concerning the transfer of proprietary intellectual property rights, the granting of permission (licensing) to use intellectual property, or the transfer of rights to know-how arising from the R&D to third parties.

Technical knowledge – knowledge that is the subject of intellectual property rights or a package of substantial unpatented practical information that is not commonly known or easily accessible (know-how).

## **III. Typical requirements**

1. Subject to the conditions specified in clause 2 of this section, concerted actions between undertakings with respect to R&D carried out with the aim of:

1.1. Joint R&D for the development of contract products or contract processes and joint use of the results of this R&D.

1.2. Sharing the results of R&D on the development of contract products or contract processes that were carried out jointly under a previous agreement between the same undertakings.

1.3. Joint research and development of contractual products or contractual processes, except for the joint use of R&D results that were not carried out jointly under a previous agreement between the same undertakings.

2. The permission provided for in clause 1 of this section applies to concerted actions between undertakings concerning R&D, provided the following conditions are met:

2.1. Joint R&D is carried out in accordance with a defined goal and within a specified industry.

2.2. All parties involved in the joint R&D have equal access to the results of the work.

2.3. Each party may independently use the results of joint R&D and any previously known technical knowledge, including in cases where the agreement provides only for joint R&D.

2.4. Joint use of R&D results pertains only to the results of joint R&D that are subject to intellectual property rights or constitute know-how that contributes to technical, technological, or economic development.

2.5. Enterprises, institutions, and organizations engaged in the production of contract products or the application of contract processes through specialization in production, fulfill orders for supply from any of the parties.

2.6. If two or more participants in the concerted actions concerning joint R&D are competing manufacturers of goods that may be improved as a result of joint R&D or replaced by contract products, and at the time of entering into the agreement the combined production of goods by the parties that may be improved or replaced by contract products does not exceed 25 percent of the commodity market.

3. Concerted actions related to R&D, as outlined in clause 1 of this section, are considered authorized for the entire duration of the R&D.

If the concerted actions concerning joint R&D involve non-competing manufacturers of goods that may be improved as a result of joint R&D or replaced by contract products, and the joint use of the results of such R&D is envisaged, the permission provided in clause 1 of this section remains valid for seven years from the date when the contract products (processes) were first introduced to the domestic market.

After this period, the permission specified in clause 1 of this section continues to apply as long as the combined production share of the parties for goods that may be improved or replaced by contract products does not exceed 25 percent of the commodity market.

4. If, at the beginning of the concerted actions, the combined market share of participants for goods that may be improved as a result of joint R&D or replaced by contract products did not exceed 25 percent but later exceeded it, the concerted actions falling under the permission provided by subclause 2.6 of clause 2 and the second and third indents of clause 3 of this section are permitted and do not require permission from the Antimonopoly Committee of Ukraine for one year following the year in which the 25 percent market share was first exceeded.

5. After the expiration of the period specified in clause 3 of this section, the permission granted under clause 1 remains valid as long as the production share of contract products,

together with the joint production of other goods considered interchangeable by consumers due to their characteristics, price, and intended use, does not exceed the share specified in subclause 2.6 of clause 2 of this section. If contract products are components used by the parties for the production of other goods, the relevant commodity markets, where contract products are indispensable, must be considered.

6. The permission provided in clause 1 of this section applies to cases of concerted actions regarding joint R&D, where participants do not assume any obligations other than the following:

6.1. Not to engage in work unrelated to joint R&D in the industry to which such work belongs or in a similar industry during the period of the R&D.

6.2. Not to enter into agreements with third parties regarding R&D in the industry to which such work belongs or in a similar industry during the performance of the work, if the contract products (processes) are the subject of joint production by the participants in the concerted actions.

6.3. To obtain contract products only from the parties, joint organizations, or third parties who are jointly involved in their production.

6.4. Any joint venture, institution, organization, or third party involved in the production of contract products must supply them exclusively to the parties of the joint R&D.

6.5. Not to produce contract products or use contract processes in certain territories where these products (processes) can be produced (used) or are already being produced (used) by other parties.

6.6. To limit the production of contract products or the use of contract processes to one or more specific technical application areas.

6.7. Not to implement an active promotion policy for contract products (processes) in the market for five years from the date the contract products (processes) were first introduced in certain territories, including refraining from targeted advertising, establishing branches, or distribution warehouses, provided that buyers and intermediaries can obtain the products (processes) from other parties and that no obstacles are created for intermediaries and buyers in obtaining the contract products (processes).

6.8. To inform the parties of any experience gained in using the contract processes and/or products.

6.9. To notify the parties of any patented or unpatented technical knowledge necessary for carrying out the R&D to achieve results.

6.10. Not to use the know-how received from another party for work not related to the R&D and its results.

6.11. To obtain and protect intellectual property rights for contract products or processes.

6.12. To safeguard the confidentiality of any know-how obtained or jointly developed during the R&D. This obligation may continue after the contract expires.

6.13. To inform the other parties of any infringements of their intellectual property rights.

6.14. To pay royalties or provide services to other parties to compensate for unequal contributions to the joint research, design work, or commercial use of their results.

6.15. To share royalties received from third parties with the other parties.

6.16. To supply the other parties to the joint R&D agreements with a minimum quantity of contract products that meet minimum quality standards.

7. The permission provided in clause 1 of this section does not extend to concerted actions concerning joint R&D that include provisions whereby:

7.1. The parties' ability to conduct R&D independently or in cooperation with third parties in an industry unrelated or adjacent to the industry in which such work is carried out is restricted, either before or after the completion of joint R&D.

7.2. The parties to the agreements are prohibited, either before or after the expiration of the R&D period, from disseminating information that questions the validity of the intellectual property rights obtained by the parties as a result of the R&D.

7.3. The parties to the agreements are restricted in terms of the number of types of contract products they may produce or sell, or the number of operations involving the use of the contract process they may carry out.

7.4. The parties to the agreements are restricted in setting prices, price elements, or discounts when selling contract products to third parties.

7.5. The parties to the agreements are restricted in their choice of customers whom they may serve, in accordance with subclause 6.3 of clause 6 of this section.

7.6. The parties to the agreements are prohibited from introducing contract products to the market or pursuing an active trade policy in certain territories where these products (processes) can be produced (used) or are already being produced (used) by other parties, after the expiration of the period specified in clauses 3 and 4 of this section.

7.7. The parties to the agreements are prohibited from allowing third parties to produce contract products or use contract processes in the absence of joint production by the participants of the concerted actions.

7.8. The parties to the agreements are obligated, without any objective reasons, to refuse to meet the needs of consumers or intermediaries in certain territories and suggest satisfying these needs in the contract product (process) market in other territories, or to obstruct consumers or intermediaries from obtaining contract products (processes) from other intermediaries within the market, including using intellectual property rights or taking actions that prevent consumers or intermediaries from acquiring or distributing contract products (processes) that have been lawfully placed on the market by another party or with its consent.

7.9. The agreements impose obligations on the parties to set sales targets and fixed prices for direct customers, if the use of the research and development results does not involve joint distribution of the contract products.

7.10. The parties are prohibited from selling contract products (processes) to third parties.