

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

UKRAINE

28 MAY 2009

**IMPORTANT NOTE:** This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

## 1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

<b>A. Notification provisions</b>	The provisions which regulate the procedure of obtaining permission to concentrate economic entities are stated in Articles 24 to 34 of Law of Ukraine of January 11, 2001, No. 2210-III "On the Protection of Economic Competition."
<b>B. Notification forms or information requirements</b>	The notification forms and the requirements for information are stated in the "Regulations Concerning the Procedure of Submitting Applications to the Antimonopoly Committee of Ukraine for the Advance Obtaining of Permission to Concentrate Economic Entities (Concentration Regulations)" approved by order of the Antimonopoly Committee of Ukraine of February 19, 2002 No. 33-p.
<b>C. Substantive merger review provisions</b>	The provisions which regulate the procedure of exercising control over the concentration of economic entities are stated in Articles 22 to 34 of Law of Ukraine of January 11, 2001 No. 2210-III "On the Protection of Economic Competition" and in Article 7 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine."
<b>D. Implementing regulations</b>	The procedure of submitting applications to the Antimonopoly Committee of Ukraine on prior receipt of a permit of the bodies of the Committee for concentration of business entities, and their consideration as set forth by the Regulations for concentration specified in p. 1.B
<b>E. Interpretive guidelines and notices</b>	1. Recommendation explanations dd. 24.09.2002 No. 3-pp of the Antimonopoly Committee of Ukraine concerning application of articles 22 and 24 of the Law of Ukraine "On protection of economic competition" at the time of purchase of ordinary registered shares. 2. Recommendation explanations dd. 14.01.2003 No. 5-pp of

	<p>the Antimonopoly Committee of Ukraine concerning application of part 4 of Article 26 of the Law of Ukraine "On protection of economic competition" at the time of appointment or election to the position of a head, deputy head of the Supervisory Council, Board, another supervision or executive body of a business entity of a person already holding one or several of the specified positions with other business entities.</p> <p>3. Recommendation explanations dd. 21.02.2003 No. 7-pp of the Antimonopoly Committee of Ukraine concerning application of part 2 of Article 29 of the Law of Ukraine "On protection of economic competition" at the time of provision of preliminary opinions on concentration of business entities.</p> <p>4. Recommendation explanations dd. 16.06.2005 No. 1-pp of the Antimonopoly Committee of Ukraine concerning application of item 2 of part 3 Article 22 of the Law of Ukraine "On protection of economic competition" at the time of examination of the matter of concentration of business entities, if purchase of shares (interest, stock) is made by a person, whose principal type of operation is performance of financial transactions or transactions with securities.</p>
<b>F. Annual report</b>	Annual results of the work of the Antimonopoly Committee of Ukraine in the sphere of exercising control over economic concentration are stated in the Committee's annual reports.

## 2. Authority or authorities responsible for merger enforcement.

<b>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</b>	<p>Antimonopoly Committee of Ukraine</p> <p>The Cabinet of Ministers of Ukraine may allow concentration not permitted as such by the Antimonopoly Committee of Ukraine, which leads to monopolization or considerable limitation of competition, if positive effect for public interests from the said concentration exceeds negative impact of limitation of competition (article 25 of the Law of Ukraine «On protection of economic competition»)</p>
<b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b>	<p>Antimonopoly Committee of Ukraine</p> <p>Uritskoho st. 45 Kyiv 03035, Ukraine Tel: +38 044 251 62 62 (Ukrainian, Russian, English) Fax: +38 044 520 03 25 E-mail: mail@amc.gov.ua</p>
<b>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</b>	<p>The Antimonopoly Committee of Ukraine or an administrative board of the Antimonopoly Committee of Ukraine gives its preliminary conclusions about concentration to bodies of power, bodies of local self government, bodies of administrative and economic government and control on the basis of both their relevant applications for giving preliminary conclusions and pieces of information attached to the applications.</p> <p>The period for considering applications for giving preliminary conclusions about concerted actions or concentration is a month. Preliminary conclusions of the relevant body of the Antimonopoly Committee of Ukraine are given in a letter which states:</p>

	<ul style="list-style-type: none"> <li>· the possibility of giving permission to concentrate;</li> <li>· the possibility of refusing permission to concentrate;</li> <li>· the necessity for or lack of the necessity for obtaining permission to concentrate;</li> <li>· the insufficiency of the information for making a conclusion.</li> </ul> <p>Obtaining preliminary conclusions about the concentration does not relieve the participants in the concentration, bodies of power, bodies of local self-government, bodies of administrative and economic government and control of the necessity of their notification to the Antimonopoly Committee of Ukraine for permission to proceed as provided for by laws of Ukraine (Article 29 of the Law of Ukraine "On the Protection of Economic Competition").</p> <p>In addition, within 15 days upon submission to the Committee of an application for permit for concentration, the state authorized officer, or employees of the Committee upon instruction of the state authorized officer may give consultations to the applicant on removal of insignificant defects of the submitted application (paragraph 4.2.1 Regulations for concentration).</p>
--	--

### 3. Notification requirements

<b>A. Is notification mandatory premerger?</b>	<p>For transactions above the thresholds specified below, parties are prohibited from closing unless they obtain permission from the Antimonopoly Committee of Ukraine (or an administrative board of the Antimonopoly Committee of Ukraine provides advance permission).</p> <p>When such permission is not given, the participants in the concentration must refrain from actions which could result in the restriction of competition and in the impossibility of restoring the initial state of affairs (parts 1 and 5 of Article 24 of the Law of Ukraine "On the Protection of Economic Competition").</p>
<b>B. Is notification mandatory postmerger?</b>	<p>In general, laws of Ukraine do not provide for post-merger notification.</p> <p>Instead, in fact, for the purpose of legitimization of the following transactions within one group, business entities often apply to the Committee for permit upon implementation of concentration</p>
<b>C. Can parties make a voluntary pre- or post-merger filing even if filing is not mandatory?</b>	<p>In the cases of concentration where obtaining permission of a body of the Antimonopoly Committee of Ukraine is not obligatory the participants in the concentration may on their own initiative apply to the Committee for its giving permission to concentrate (point 3.3 of the Concentration Regulations).</p>

### 4. Covered transactions

<b>A. Definitions of potentially covered transactions (i.e., concentration or merger)</b>	<p>The following is considered to be concentration:</p> <ol style="list-style-type: none"> <li>1) the merger of economic entities or the addition of an economic entity to another entity;</li> <li>2) obtaining control directly or through other persons over one or</li> </ol>
---	---

	<p>several economic entities or over parts of economic entities by one or several economic entities, in particular by means of:</p> <p>a) the direct or indirect purchase or obtaining (by other means) assets in the form of an integrated property complex of or a structural subdivision of an economic entity; the obtaining (for further management), lease, leasing, concession or obtaining (by other means) the right to use assets in the form of an integrated property complex of or a structural subdivision of an economic entity, in particular the purchase of assets of a liquidated economic entity;</p> <p>b) the appointment or election of a person — occupying one or several positions of the head, a deputy head of the supervisory board, the board of directors or the mentioned positions at other supervisory or executive bodies of other economic entities — as the head, a deputy head of the supervisory board, the board of directors or of other supervisory or executive bodies of the economic entity or the creation of a situation where there is the coincidence of more than half of the members of the supervisory board, the board of directors, of members of other supervisory or executive bodies of two or more than two economic entities;</p> <p>3) the establishment of the economic entity by two or more than two economic entities which will independently perform economic activities for a long period, whereas the mentioned formation does not result in the coordination of competition behavior between economic entities which established the economic entity or between them and the newly-established economic entity;</p> <p>4) the direct or indirect purchase, obtaining (by other means) or obtaining (for management) stocks (shares) which ensures attaining or exceeding 25 or 50% of the votes at the higher board of management of the relevant economic entity (part 2 of Article 22 of the Law of Ukraine "On the Protection of Economic Competition").</p>
<p><b>B. If change of control is a determining factor, how is control defined?</b></p>	<p>Control is the decisive impact on economic activities of an economic entity or its part which is exerted by one or more than one related (linked) legal and (or) natural persons directly or through other persons, in particular by the right to own or use all the assets or their considerable part; the right ensuring a decisive impact on the formation, voting results, and decisions of managing bodies of the economic entity; the conclusion of the agreements and contracts which make it possible to set conditions for economic activities, to give binding instructions or to perform functions of the managing body of the economic entity; the occupation of the position of the head, a deputy head of the supervisory board, the board of directors or of other supervisory or executive body of the economic entity by the person who occupies one or several of the mentioned positions at other economic entities; the occupation of more than half of the positions of members of the supervisory board, the board of directors, other supervisory or executive bodies of the economic entity by the persons who occupy one or several of the mentioned positions at another economic entity. The following persons are considered to be related persons: legal and (or) natural persons who jointly or concertedly perform economic activities, including those which jointly or concertedly impact on economic activities of the economic entity (paragraph 4 of Article 1 of the Law of Ukraine</p>

	"On the Protection of Economic Competition"). In particular, related individuals shall be those who are spouses, parents and children, brothers and/or sisters.
<b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b>	See the answer to question 4A.
<b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b>	See the answer to question 4A (sub-point "b"). In the cases where the establishment of an economic entity by two or more than two economic entities results in the coordination of competitive behavior of the economic entities which created the relevant economic entity or in the coordination of competitive behavior of the founders and the newly established economic entity such establishment is considered to be concerted actions of economic entities.
<b>E. Are any sectors excluded from notification requirements? If so, which sectors?</b>	The purchase of stocks (shares) of an economic entity by a person whose major type of activities include the performance of financial operations or operations having relation to securities if the purchase is made for the further resale of the stocks (shares) provided that the mentioned person does not participate in voting at the higher board of management or at other boards of management of the economic entity is not considered to be concentration and requires no permission. In a case like that the further resale shall be carried out within a year from the date of the purchase of stocks (shares). Bodies of the Antimonopoly Committee of Ukraine, proceeding from an application which is to be submitted by the mentioned persons and which must substantiate the impossibility of carrying out the further resale, may take a decision on the prolongation of the period (point 2 of part 3 of Article 22 of the Law of Ukraine "On the Protection of Economic Competition").
<b>F. Are transactions that do not meet merger notification thresholds subject to substantive merger control?</b>	Irrespective of the cost indicators of operation of participants of horizontal or vertical concentration, prior receipt of a permit of the Committee for such concentration shall be compulsory, when a share (aggregate share) of participants of concentration in engaged product markets exceeds 35 percent (paragraph 2 of part 1 of Article 24 of the Law of Ukraine «On protection of economic competition»).

## 5. Thresholds for notification

<b>A. What are the general thresholds for notification?</b>	The Law of Ukraine "On the Protection of Economic Competition" (Article 24) establishes that concentration may be carried out only if prior authorization is granted by the Antimonopoly Committee of Ukraine or its administrative board. It is necessary to obtain that sort of authorization in the cases provided for by Part 2 of Article 22 of the mentioned Law if the following three conditions are satisfied: 1) the total value of assets or the total product sales of the participants in the concentration in the last financial year, including those abroad, exceed 12,000,000 euros; 2) the value (total value) of assets or the product sales (total product sales), including those abroad, of each of at least two participants in the concentration exceed 1,000,000 euros;
---	--

	<p>3) the value (total value) of assets or the product sales (total product sales) in Ukraine of at least one participant in the concentration exceed 1,000,000 euros.</p> <p>In all the above cases it is necessary to take into account relations of control and to use the exchange rate which was established by the National Bank of Ukraine and was effective on the last day of the financial year.</p> <p>For the purpose of calculating sales of products of participants in a concentration it is necessary to use the income (proceeds) from the sale of products (goods, work, services) in the last financial year preceding the year in which the application is submitted with the deduction of the value-added tax, the excise, and other taxes or duties the calculation of which is based on a turnover. Finances got from the sale of products within a group of economic entities linked by relations of control, if accounts of that sort are kept, are not taken into account.</p> <p>If commercial banks are participants in a concentration, one-tenth of the value of assets of a commercial bank is used for the calculation of both the value of assets and sales. In cases where insurers are participants in a concentration, net assets are used for the calculation of the total value of assets of the insurer and the incomes from insurance activities which are defined in accordance with laws of Ukraine relating to insurance activities are used for the calculation of sales.</p> <p>In addition, irrespective of the aggregate cost of assets or aggregate scope of sales of products by participants of concentration, concentration may be implemented only subject to receipt of a permit of the body of the Committee, when a share in the specific market held by a product of any participant of concentration or aggregate share of participants of concentration, taking into consideration the relations of control, exceeds 35 percent, and concentration is implemented in this market or in the related product market.</p>
<p><b>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</b></p>	<p>All information provided for the purposes of demonstrating that jurisdictional thresholds have been met, including financial and market share data, must include any affiliates of the applicant.</p>
<p><b>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</b></p>	<p>No</p>
<p><b>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end,</b></p>	<p>See the answer to question 5A (paragraph 2).</p> <p>In Ukraine, financial year coincides with calendar year (article 3 of the Budget Code of Ukraine, article 3 of the Law of Ukraine «On accounting and financial statements»).</p>

<b>fiscal year-end, other)?</b>	
<b>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</b>	<p>See 5.A above.</p> <p>The income (proceeds) from the sale of products by enterprises, organizations and other legal persons of all the forms of ownership (with the exception of banks and budget offices) which is stated in their financial reports and consolidated financial reports should correspond to the data stated in column 3, line 035 of the form "Net Income (Proceeds) from the Sale of Products (Goods, Work, Services)" as approved by order of the Ministry of Finance of Ukraine of March 31, 1999 No. 87 registered by the Ministry of Justice of Ukraine under No. 397/3690 on June 21, 1999 (hereinafter referred to as Form No. 2). The assets of enterprises, organizations and other legal persons of all the forms of ownership (with the exception of banks and budget offices) which are stated in their financial reports and consolidated financial reports should correspond to the data stated in column 4, line 280 of the form "Balance" which was approved by order of the Ministry of Finance of Ukraine of March 31, 1999 N. 87 registered by the Ministry of Justice of Ukraine under No. 396/3689 on June 21, 1999 (hereinafter referred to as Form No. 1).</p> <p>Assets of budget offices should correspond to the data stated in column 4, line 350 of Form No. 1 as approved by order of the State Treasury of Ukraine of March 23, 2000 No. 23 registered by the Ministry of Justice of Ukraine under No. 233/4454 (points 4 to 4.2 of Annex 5 to the Concentration Regulations).</p>
<b>F. Describe methodology for calculating exchange rates.</b>	<p>Exchange rates is the official rate of the National Bank of Ukraine on December 31.</p>
<b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b>	<p>To both.</p>
<b>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</b>	<p>No</p>
<b>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to</b>	<p>Ukrainian laws establish the single legal regime of exercising control over economic concentration for both residents and non-residents of Ukraine.</p> <p>Extraterritoriality of the Ukrainian legislation on protection of economic competition, specifically, to the extent of control of economic concentrations, is implied by the content of articles 2 and 24 of the Law of Ukraine «On protection of economic competition», and allows to control, in particular, those agreements, which are completely realized outside the territory of Ukraine.</p>

<b>meet an “effects” test?</b>	
<b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b>	See the answer to question 5A (paragraph 3). Taking into consideration the scope of products sale in the whole territory of Ukraine, without taking into consideration the geographical localization of products.
<b>K. If market share tests are used, are there guidelines for calculating market shares?</b>	The procedure of calculating market shares is stated in Annex 2 to the Concentration Regulations. The share of economic entities including a participant in concentration in the market of products is calculated in accordance with the requirements of the "Methodology for Defining a Monopoly (Dominant) Position of Economic Entities" which was approved by order of the Antimonopoly Committee of Ukraine of March 5, 2002 No. 49-p. In the course of the calculation of assets (total assets), sales (total sales) of products and shares (total shares) in product markets the real indices (assets, sales and shares) having relation to both domestic and foreign activities of each enterprise, organization and other persons comprised by such economic entities for the last financial year are used, with relations of control being taken into account. Shares (total shares) of economic entities in the relevant market, assets (total assets) and sales (total sales) are calculated as the sum of the relevant indices of economic entities. Total share in the relevant market, total assets or total sales of products (work, services) of all the economic entities is calculated by adding the relevant indices of all the economic entities (points 5 and 6 of Annex 5 to the "Concentration Regulations").
<b>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</b>	If commercial banks are participants in a concentration, one-tenth of the value of assets of a commercial bank is used for the calculation of both the value of assets and sales. In cases where insurers are participants in a concentration, net assets are used for the calculation of the total value of assets of the insurer and the incomes from insurance activities which are defined in accordance with laws of Ukraine relating to insurance activities are used for the calculation of sales. The procedure of calculating threshold indications to be used for these purposes and the procedure peculiarities relating to certain categories of economic entities are established by the Antimonopoly Committee of Ukraine. Assets of a bank correspond to the data stated in the line "Total Assets", in the column "Total Balance" of the Balance of a Commercial Bank (Form No. 10- KБ (monthly) as approved by resolution of the Board of the National Bank of Ukraine of December 12, 1997 No. 436). The sum of net assets of an insurer corresponds to the data stated in column 4, line 280 of Form No. 1 with the deduction of the data stated in column 4, lines 010, 430, 460, 620 of Form No. 1 (part 4 of Article 24 of the Law of Ukraine "On the Protection of Economic Competition," points 4.3 and 4.4 of Annex 5 to the Concentration Regulations).
<b>M. Are any sectors excluded from notification requirements? If so, which</b>	No

sectors?	
N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?	No
O. Does the agency have the authority to review transactions that fall below the thresholds?	Yes

## 6. Notification requirements and timing of notification

A. Is notification mandatory pre-merger?	Yes
B. Is notification mandatory post-merger?	No
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	Yes
D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive)?	<p>Concentration which requires authorization in accordance with Part 1 of the present Article shall be prohibited until it has been authorized. Until the concentration has been authorized, participants in the concentration shall refrain from actions which could result in the restriction of competition and in the impossibility of restoring the original state (part 5 of Article 24 of the Law of Ukraine "On the Protection of Economic Competition").</p> <p>Carrying out concentration without permission of the Committee's body is considered to be a committed violation of laws on the protection of economic competition unless laws provide for otherwise or actions of the economic entity result in otherwise, in particular in case of:</p> <ul style="list-style-type: none"> <li>· carrying out concentration by establishing an economic entity, namely a legal person, — from the moment of the state registration of the legal person;</li> <li>· establishing an economic entity by obtaining control by one or several economic entities over one or several economic entities or parts of economic entities — from the moment of obtaining control;</li> <li>· merging economic entities — from the moment of the state registration of the economic entity which resulted from the merger;</li> <li>· adding an economic entity — from the moment of the exclusion of</li> </ul>

	<p>the added economic entity from the Register of Economic Entities;</p> <ul style="list-style-type: none"> <li>· purchasing ordinary registered stocks which were issued in documentary form — from the moment when changes in the Register of Owners of Registered Securities in connection with the purchase of the block of stocks were made;</li> <li>· purchasing ordinary registered stocks issued in nondocumentary form or stocks deprived of movement — from the moment when a keeper assigned the purchased securities to the purchaser;</li> <li>· purchasing stocks, obtaining stocks by other means, obtaining stocks for management (use) — from the moment when the right to own, the right to manage (use) the stocks was got according to the contract (power of attorney);</li> <li>· purchasing bearer stocks — from the moment when the right to own the stocks was transferred according to the contract of purchase;</li> <li>· obtaining stocks for management (use) — from the moment when the right to manage (use) the stocks was got according to the contract (power of attorney);</li> <li>· purchasing or obtaining (as property by other means), obtaining (for management or use) assets in the form of an integrated property complex of an economic entity — from the moment when the right to own, the rights to manage (use) the assets (property) was got according to the contract (power of attorney) (point 6.2 of the Concentration Regulations).</li> </ul>
<p><b>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</b></p>	<p>If concerted actions or concentration are carried out with the application of competition procedures (tenders, auctions, contests, etc.) an application may be submitted both before and after the competition procedure but within a 30-day period from the date when the winner was awarded the victory unless laws provide for otherwise.</p>
<p><b>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</b></p>	<p>In Ukrainian legislation the notification deadline is not provided for : The procedure require the permission not just notification</p>

## 7. Simplified procedures

<p><b>Describe any special procedures for notifying</b></p>	<p>Ukrainian laws provide no simplified procedures for granting a permission to concentrate economic entities. The applicant shall be entitled to file a petition for release from the</p>
---	--

<p><b>transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).</b></p>	<p>obligation to submit separate information provided for by the Regulations for concentration specifying good reasons for absence of the need of the specific information for examination of the claimed concentration (paragraph 3.13 of the Regulations for concentration).</p>
---	--

## 8. Documents to be submitted

<p><b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</b></p>	<p>An application for giving the Committee's permission to concentrate economic entities must be submitted in written form and must include:</p> <ul style="list-style-type: none"> <li>· the name of the body to which the application is submitted;</li> <li>· references to the relevant normative and legal act (point, part, article) which provides for applying to the Committee or its territorial office;</li> <li>· the name and the requisites of the applicant and his representative (a body of state power, a body of local self-government, a body of administrative and economic government and control, an economic entity, a natural person, a representatives' office of a foreign economic entity in Ukraine, etc.);</li> <li>· the essence of the actions which the applicant requests to permit;</li> <li>· the name and the requisites (mail address, fax and telephone numbers, etc.) of the participants in the concentration;</li> <li>· a list of the documents and pieces of information which are attached to the application.</li> </ul> <p>The application (apart from an application for giving, first, the Committee's conclusions with respect to the possibility of leasing an integrated property complex or its structural subdivision which is state property, communal property or the property of the Autonomous Republic of the Crimea) must be accompanied with the document which confirms the payment of a charge for the submission of the application (the payment order with a bank note or the receipt) and the following duly prepared documents.</p> <p>In case of merging economic entities or adding one economic entity to another:</p> <ul style="list-style-type: none"> <li>· the copies of constituent documents (the agreement on the establishment of the economic entity, its articles) of the economic entity which is established as a result of the merger, copies of the constituent documents of the merging economic entities, of the added economic entities or the economic entities to which other economic entities are being added, copies of their registration certificates and of the decisions about the merger or addition;</li> <li>· the data about the concentration of economic entities which include information about the essence of the notified action and the calculation of total value indices in accordance with the established volume, form and content;</li> <li>· the data about the basic activities of each of the participants in the concentration, its share in the market (in accordance with the established volume, form and content) which, in particular, include information about the basic activities of the economic entities being</li> </ul>
---	---

participants in the concentration, data about their shares in national product markets for the last two years and for the period under review of the current year and information about the basic activities of the established economic entity, estimates of its shares in national product markets.

In case of obtaining direct control or control through other persons by one or several economic entities over one or several economic entities or parts of economic entities by purchasing directly or indirectly assets in the form of an integrated property complex or a structural subdivision of an economic entity, by obtaining the right to use assets in the form of an integrated property complex or a structural subdivision of an economic entity for management, lease, leasing or concession, including the purchase of assets of the economic entity which is being liquidated:

- copies of the constituent documents (the agreement on the establishment of the economic entity, its articles) of the economic entities which are obtaining control and over which control is being got, a copy of the registration certificate of the enterprise the integrated property complex or the structural subdivision of which is being transferred for management, lease, leasing or concession or with respect to which the right to use assets in the form of an integrated property complex or a structural subdivision of the economic entity is being got, including the purchase of assets of the economic entity which is being liquidated, and copies of the registration certificates of the lessee, the leasing-holder, the concessioner, the person who is obtaining the right to control;
- a draft for a contract for the management, lease, leasing, concession, obtaining (as property) of assets by other means or a copy of the mentioned contract with a suspensive condition and explanations for it;
- copies of decisions, agreements, documents, etc., drafts for other decisions, agreements, documents the implementation of which on the whole will ensure the obtaining of control;
- pieces of information about the concentration and the participants in the concentration of economic entities. In case of obtaining control directly or through other persons by one or several economic entities over one or several economic entities or parts of economic entities by appointing or electing the person who occupies the position of the head or a deputy head of the supervisory board or the board of directors or other supervisory or executive body of another economic entity to occupy one or more than one of the mentioned positions at the economic entity under review or by creating the situation in which more than half of the positions of members of the supervisory board, the board of directors, other supervisory or executive bodies of two or more than two economic entities are occupied by the same persons:
- copies of the constituent documents (the agreement on the establishment of the economic entity, its articles) of the economic entities which are the participants in the concentration, copies of decisions of the economic entities about the appointment or the election of persons as the head or a deputy head of the supervisory board, the board of directors, other supervisory or executive body of the economic entity, information about and a list of the positions which are occupied by the mentioned persons at other economic entities;
- pieces of information about the concentration and the participants in the concentration of economic entities. In case of obtaining

control directly or through other persons by one or several economic entities over one or several economic entities or parts of economic entities by means of establishing the economic entity by two or more than two economic entities which will independently perform economic activities for a long period and the establishment of which will not result in the coordination of competitive behavior of the economic entities which established this economic entity or the coordination of competitive behavior of the economic entities being founders and the newly established economic entity:

- copies of constituent documents (the agreement on the establishment of the economic entity, its articles) of the economic entity which is being established, the decision about the establishment of the economic entity (the minutes of the meeting) which states the powers of the representatives;
  - pieces of information about the concentration and about the participants in the concentration of economic entities.
- copies of constituent documents of business entities being or intended to become founders (members) of a newly founded business entity/

In case of obtaining control by one or more than one economic entities over one or more than one economic entities or parts of economic entities by other means:

- copies of decisions, agreements, documents, etc., drafts for other decisions, agreements, documents the implementation of which on the whole will result in obtaining control;
- copies of the constituent documents (the agreement on the establishment of the economic entity, its articles) of the participants in the concentration;
- pieces of information about the concentration and the participants in the concentration of economic entities. In case of the direct or indirect (through other persons) purchase of stocks (shares), the obtaining of them as property by other means, the obtaining of them for management which ensures reaching or exceeding 25 or 50% of the votes at the ensures attaining or exceeding 25 or 50% of the votes at the higher board of management of the relevant economic entity:
- copies of the constituent documents (the agreement on the establishment of the economic entity, its articles) and of the registration certificate of the purchaser (the obtaining person);
- a draft for a contract (of purchase (sale), management, use, etc.) or a copy of the mentioned contract with a suspensive condition and explanations for it;
- a copy of the balance of the economic entity which is purchasing stocks (shares) as of the end of the last accounting quarter which precedes the date of the submission of the application;
- copies of the constituent documents (the agreement on the establishment of the economic entity, its articles) of the participants in the concentration;
- pieces of information about the concentration and the participants in the concentration of economic entities. In case of a hostile purchase, obtaining as property by other means, obtaining for management (use):
- copies of the constituent documents (the agreement on the establishment of the economic entity, its articles), a copy of the registration certificate of the economic entity which is purchasing stocks (shares);

- a draft for a contract in accordance with which the stocks (shares) are being purchased or a copy of the mentioned contract with a suspensive condition and explanations for it;
- a copy of the balance of the economic entity which is purchasing the stocks (shares) as of the end of the last quarter under review which precedes the date of the submission of the application;
- copies of the constituent documents (the agreement on the establishment of the economic entity, its articles) of the participants in the concentration;
- pieces of information about the concentration and the participants in the concentration of economic entities;
- a copy of the letter (with the notification about the delivery of the letter) to the economic entity the stocks (shares) of which are being purchased about the submission of the necessary information concerning this economic entity and the economic entities linked with it thanks to relations of control a reply to which the applicant did not receive or the reply to which was negative.

In the above mentioned cases the application must be accompanied with lists of the persons who are members of the supervisory board, an executive body or a controlling body, who perform duties of the head, a deputy head, the chief accountant of a participant in the action being the subject of the application. With respect to each person, information about other economic entities the supervisory board, an executive body or a controlling body of which includes the person as a member, with names of positions being indicated in accordance with the defined volume, form and content.

In case of obtaining conclusions concerning the advisability of establishing industrial and financial groups, with respect to the technical and economic substantiation and the general agreement on joint activities having relation to the production of final products of the industrial and financial group the following documents must be attached to the application:

- a power of attorney granted by the initiators of the establishment of the industrial and financial group;
- the general agreement on joint activities having relation to the production of final products of the industrial and financial group;
- the technical and economic substantiation;
- pieces of information about the concentration and the participants in the concentration of economic entities. In case of obtaining conclusions concerning the possibility of leasing and the conditions of a contract of leasing an integrated property complex of an enterprise or its structural subdivision which is state or communal property or is owned by the Autonomous Republic of the Crimea the following documents must be attached to the application:
- copies of the constituent documents (the agreement on the establishment of the economic entity, its articles), a copy of the registration certificate of the enterprise the integrated property complex of which is being leased;
- a draft for the lease contract;
- a copy of the permission of the Committee's body to lease the integrated property complex of the enterprise or its structural subdivision which is state or communal property or is owned by the Autonomous Republic of the Crimea;
- pieces of information about the concentration and the enterprise the integrated property complex of which is being leased.

In case of a lease, leasing, concession of assets in the form of an

integrated property complex or a structural subdivision of the enterprise the following documents must be attached to the application:

- copies of the constituent documents (the agreement on the establishment of the economic entity, its articles), a copy of the registration certificate of the enterprise with respect to the assets of which in the form of an integrated property complex or with respect to the structural subdivision of which a lease, a leasing or a concession is being granted; the same applies to the lessee, the person who gets a leasing, the concessioner;

- a draft of the contract of the lease, leasing, concession or a copy of the mentioned contract with a suspensive condition and explanations for it;

- pieces of information about the concentration and the participants in the concentration of economic entities. With respect to enterprises which are being privatized the following documents must be submitted: a copy of the plan to privatize the economic entity, a copy of the plan to place stocks, a copy of the act to evaluate property.

If the participant in the concentration is comprised by an association of enterprises, it is necessary to submit copies of the constituent documents (the agreement on the establishment of the economic entity, its articles), a copy of the registration certificate of the association and the organization and legal structure of the association. If the association performs functions of control over economic activities of comprised enterprises, the report forms concerning the concentration and the participants in the concentration of economic entities (both the association and the enterprises comprised by it) must be submitted too.

The following documents must be attached to the application:

- the economic substantiation of the concentration in accordance with established requirements;

- written confirmations of powers of representatives of the participants in the concentration (in the form of a contract of agency or a power of attorney granted by the participant (participants) in the notified action to represent its (their) interests before the Committee's bodies.

In case of the submission of an application for making preliminary conclusions concerning the concentration, the volume of both information and documents may be increased in accordance with peculiarities of the concentration.

During the investigation participants in the concentration or any related body and other legal and natural persons may also be requested to submit:

- copies of the final or the last variants of all the documents on the basis of which the concentration is being carried out (the agreement concluded by the parties, the application for the purchase of a block of stocks, the application for participation in tenders, etc.);

- copies of the forms of financial and statistic reports of all the parties being participants in the concentration for the two last financial years and for the report period of the current year together with the relevant sheets;

- extracts from annual inventory sheets with respect to the stocks (shares) in the property of other economic entities which are owned, managed (used) by the participant in the concentration;

- a list of the economic entities which own or manage (use) stocks

(shares) of the participant in the concentration and a list of the economic entities the stocks (shares) of which are owned, managed (used) by the participant in the concentration;

- copies of the reports, plans or drafts which were prepared in connection with the concentration;
- a list of and a short description of the content of all the analyses and researches which were prepared for any party that is notifying or which were prepared by the party itself for the purpose of evaluating the proposed concentration in terms of conditions of competition, competitors (both real and potential) and conditions on markets (the name of the author and his position must be stated at the end of each point of the list);
- additional pieces of information about sources of finances for the purchase or about the fulfillment of investment obligations and (or) conditions of financial support to the purchase (bank certificates, credit agreements, guarantee obligations, etc.);
- copies of the constituent documents (the agreement on the establishment of the economic entity, its articles) with further changes and additions, copies of the registration certificates of the participants in the concentration;
- other pieces of the information which is necessary for considering the application (case) within the competence of the Committee which is defined by the Law of Ukraine "On the Antimonopoly Committee of Ukraine." If it is impossible to submit information about the participants in the concentration, the causes must be stated.

In obvious cases the number of requested documents and pieces of information may be reduced after coming to an agreement with a state commissioner of the Antimonopoly Committee of Ukraine (points 3.8 – 3.13 of the Concentration Regulations).

A set of the documents which are attached to the application must have the unbroken numeration of sheets and must be filed. Constituent documents, changes in constituent documents, technical and economic substantiation, general agreement on joint activities having relation to the production of final products of the industrial and financial group must be certified in accordance with established procedure. An application must be signed by the head (or a person authorized by the head) of the participating economic entity who has the powers to carry out the concentration or it must be signed by the applicant (or a person authorized by the applicant) being the head of the economic entity which is a direct participant in the concentration or on behalf of which the concentration is being carried out. The sheets and other documents which are attached to the application must be signed by the applicant who is carrying out the concentration or on behalf of whom the concentration is being carried out or they must be signed by a person authorized by the applicant and must be sealed. The name, position, place of work, telephone of the person who prepared answers to questions of the relevant division and the date when sheets were prepared must be stated too.

A joint application must be signed by the heads of all the economic entities who take the decision about the concentration or by persons authorized by the heads. An application which is being submitted by a natural person and attached documents must be signed by the natural person. The signature must be certified either with the use of the seal of the organization in which the person works or notarially. Documents and pieces of information in foreign languages must be

accompanied with the relevant translations into Ukrainian which must be certified in accordance with established procedure.

The documents which are stated in two or more than two sheets must be numerated, sewed and sealed.

Each economic entity which prepares pieces of information is responsible for the accuracy of stated information.

The economic substantiation of concentration must include the following information:

- purpose;
- expected results with respect to each participant;
- impact of the concentration on the relevant product markets (with real and potential competitors being taken into account), tendencies of changes in demand and supply, saturation of product markets;
- changes in consumer qualities of products, increase in the competitiveness of domestic enterprises on external markets, the economic and financial effects of the concentration which can result in changes in value, prices, profits.

If there are signs of the monopolization of a particular product market (obtaining, maintaining or strengthening a monopoly (dominant) position by certain economic entities) or of the substantial restriction of competition on the whole market or in its significant part, the economic substantiation must be accompanied with a business plan for a medium-term (2 to 3 years) period of the development of the economic entities on the market, an estimate of both the negative effect of the restriction of competition and the positive effect for public interests which can be achieved thanks to:

- the improvement of production, the purchase and sale of products;
- technological and economic development;
- the development of small or medium-sized entrepreneurs;
- the optimization of export or import of products;
- the development and application of unified technical conditions or standards on products;
- the rationalization of production, etc. Participants must provide the following information as necessary:

- to state the names of all the participants in the concentration, indicating: the official names (of legal persons), Christian names, patronymics and surnames (of natural persons); the code according to the United State Register of Enterprises, Organizations and Offices (for legal persons), the series, number and date of the document which proves the identity of the person (for natural persons); addresses, telephone and fax numbers;

In cases, when the decisive influence arises as a result of ownership, management or use of shares (interests, stock) in the set scope, form and content, it is necessary:

- to describe the organization structure of each participant in the concentration, indicating the name and address of each separate structural subdivision;
- to describe relations between the participants in the concentration in accordance with established procedure;
- to state a list (in accordance with established form) of:
  - legal persons:
    - in the authorized capital of which the participant in the concentration owns or manages (uses) a share being not less than 10%;
    - in higher boards of management of which the participant in the

concentration has not less than 10% of the votes;

- legal and natural persons:
  - each of whom owns or manages (uses) the share (stocks) in the authorized capital of the participant in the concentration which is not less than 10%;
  - each of whom in the higher board of management of the participant in the concentration has not less than 10% of the votes;
- to describe relations of the mentioned persons with the participants in the concentration.

When information about the concentration of economic entities is being stated, it is necessary to describe the essence of the concentration of economic entities in accordance with notified types of actions, to mention expected periods of the completion of the concentration and the basic dates having relation to the events. In addition, in certain cases specific information is included in information about the concentration of economic entities.

In cases of merging two or more economic entities or in cases of the addition of one economic entity to another economic entity, in information about the concentration it is necessary to describe the method of merging, adding, in particular the method of uniting bodies of management, networks for the distribution of products and networks for rendering services.

In case of obtaining direct or indirect (through other persons) control by one or several economic entities over one or several economic entities or over their parts, in information about the concentration of economic entities it is necessary:

- to state the names of both the economic entities which are obtaining control and the economic entities over which control is being obtained;
- to describe the method of obtaining control.

If assets in the form of an integrated property complex or a structural subdivision of the economic entity are being purchased directly or indirectly (through other persons) or are being got as property by other means, in particular if assets of a liquidated economic entity are being purchased, in information about the concentration of economic entities it is necessary:

- to state the name and address of the seller of it;
- to state the name and address of the economic entity which is the owner of the structural subdivision, the name and address of the liquidated economic entity;
- to describe the method of obtaining control;
- to describe the integrated property complex or the structural subdivision;
- to state the place where the integrated property complex or the structural subdivision is situated, the purpose, composition (structure), value of the complex or the subdivision in Ukrainian hryvnias and euros.

If the right to use assets in the form of an integrated property complex or a structural subdivision of an economic entity are being got for management, lease, leasing, concession or if the right is being got by other means, in particular if assets of a liquidated economic entity are being purchased, in information about the concentration of economic entities it is necessary:

- to state the name and address of the person who is transferring assets for management, lease, leasing, concession or by other means is granting the right to use assets in the form of an integrated property complex or a structural subdivision of an economic entity;

· to state the name and address of the economic entity which owns the structural subdivision, the name and address of the economic entity the assets of which are being transferred;

· to describe the method of exercising control;

· to describe the assets which are being transferred for management, lease, leasing, concession, in particular to describe structural subdivisions, integrated property complexes (the places where they are situated, the purpose, composition (structure), value of the complexes or the subdivisions in Ukrainian hryvnias and euros).

If a person who occupies one or several positions of the head, a deputy head of the supervisory board, the board of directors or of other supervisory or executive bodies of other economic entities as the head, a deputy head of the supervisory board, the board of directors or of other supervisory or executive bodies of the economic entity, in information about the concentration of economic entities it is necessary:

· to state the surname, initials, position, address of the appointed or elected person;

· to state by whom and how the decision about the appointment or election was taken.

If more than half of the positions at the supervisory board, the board of directors, other supervisory or executive bodies of two or more than two economic entities are occupied by the same persons, in information about the concentration of economic entities it is necessary:

· to state the names, initials, positions and addresses of the elected persons;

· to state by whom and how the decision which resulted in the situation was taken;

· to describe how the situation is being created.

In case of establishing an economic entity, in information about the concentration of economic entities it is necessary:

· to state the name and mail address of the economic entity being established, to describe its structure;

· to state the authorized capital of the economic entity being established;

· to indicate all the founders, namely to state their names, the places where they are situated, the contribution of each founder expressed in both Ukrainian hryvnias and euros; if the contribution is in the form of securities, to state their emitter, name, number, value expressed in both Ukrainian hryvnias and euros; if the contribution is in the form of a share in the authorized capital of the economic entity, to state the percentage of the share in the authorized capital;

· to describe the conditions under which the founders agreed to make their contributions, to indicate what each founder will get in exchange of its contribution.

In case of obtaining direct or indirect (through other persons) control by one or several economic entities over one or several economic entities or parts of economic entities by means differing from those described in the above paragraphs, in information about the concentration of economic entities it is necessary:

· to state the name of the economic entity which is obtaining control and the name of the economic entity over which control is being got;

· to describe how control is being got.

In case of the direct or indirect (through other persons) purchase of

stocks (shares), the obtaining of them as property by other means, the obtaining of them for management which ensures reaching or exceeding 25 or 50% of the votes at the ensures attaining or exceeding 25 or 50% of the votes at the higher board of management of the relevant economic entity, in information about the concentration of economic entity it is necessary:

- to state how the purchase will be carried out, namely by an agreement with the seller, directly or indirectly, etc.;
- to state who is the owner of the stocks, from whom they will be purchased, namely from the issuer or not from the issuer;
- to describe the object of the purchase, namely what is being purchased, the sum of the purchase expressed in both Ukrainian hryvnias and euros, the percentage of the share in the authorized capital of the issuer;
- to submit the following information about the issuer: its name and address, the total sum of emission, a list of the securities of all types which ensure the right to vote, the description of the peculiarities of the use of the rights granted by the securities, a list of the securities of other types which do not ensure the right to vote;
- to submit a copy of the contract if the purchase is planned to be carried out by an authorized person on the basis of the contract signed with the trustee or if the purchased economic entity is planned to be managed by an authorized person on the basis of the contract of trust management.

If any participant in the concentration has been maintaining vertical or horizontal relations concerning some products within the recent year, to state the codes of the products, to characterize the vertical and horizontal relations between the participants in the concentration, to describe the levels of cooperation between them.

In information about the concentration of economic entities it is also necessary to describe financial aspects of the concentration, in particular it is necessary to state:

- the participation share of each participant in the concentration which must be expressed in terms of both value and percentage;
- sources, amounts and conditions of the financial support which is given to each participant in the concentration in order to complete the concentration.

With respect to each participant in the concentration it is necessary to state the names, addresses and codes according to the United State Register of Enterprises, Organizations and Offices of all the economic entities with which the participants have relations of control over economic activities.

It is also necessary to submit:

- copies of the documents which have an impact on legal relations between the participants in the concentration and between the participants, on the one hand, and other economic entities, on the other hand, in particular copies of agreements on joint activities, on the implementation of joint projects (including investment projects), codes of behavior (rules of professional ethics) if such codes exist;
- complete pieces of information about the relations of control with which the participants in the concentration are linked with each other and pieces of information about the person who exercises control over the group of economic entities the members of which are linked with each other thanks to relations of control and which includes the participants in the concentration. A scheme of relations can be attached to this information;
- pieces of information about the economic entities to the interests

of which the purchasers are acting.

With respect to each participant in the concentration it is necessary to state the data for the last financial year which concern the under-mentioned value indices and, respectively, to calculate the total value of assets and the total volume of sales of products (work, services) of the participants in the concentration:

- the value (total value) of assets;
- the volume (total volume) of sales of products (work, services) which must be expressed in both hryvnias and euros.

With respect to each participant in the concentration it is necessary to state the under-mentioned data for the last two years about shares in the product markets on which the concentration or effects of the concentration can take place and, respectively, to calculate the total shares of the participants in the concentration in the mentioned product markets:

- the share in the market;
- the total share;
- the percentage of the share in the relevant market.

Pieces of information about the basic activities of the enterprise and its share must include the following documents drawn up according to the established form:

- a characteristic of activities of the enterprise on the national market;
- a list of the basic competitors of the enterprise on the national market;
- a characteristic of activities of the basic consumers and suppliers of the enterprise on the national market;
- a characteristic of activities of the enterprise on the regional market;
- a list of the basic competitors of the enterprise on the regional market;
- a characteristic of activities of the basic consumers and suppliers of the enterprise on the regional market.

This information must be stated separately for the last accounting year and for the year which preceded the last accounting year and (after the ending of the second quarter) for the period under review of the current year.

In a list of natural persons who are members of the supervisory board, an executive body or a controlling body or who fulfill duties of the head, a deputy head, the chief accountant of the respective participant in the notified concentration with respect to each person it is necessary to submit information about other economic entities the supervisory boards, executive or controlling bodies of which include the person, with the person's positions being mentioned, in accordance with the established form.

Concerning all individuals being members of business entities participating in concentration, lists of legally capable persons shall be submitted: husband (wife), parents, children, brothers, sisters of individuals being members of business entities participating in concentration, and owning or using assets of the business entities; having the rights ensuring influence on formation of membership, results of voting and resolutions of management bodies of business entities; doing duties of director, deputy director of the supervisory council, board, another supervising or executive body of business entities, having an opportunity to influence business operation due of business entities due to other persons in the set scope, form and

	<p>content.</p> <p>For the calculation of value indices of economic entities it is necessary to use forms of their financial reports for the last financial year which precedes the year in which the application is being submitted (points 3.9 to 3.9.13 of the Concentration Regulations; Annexes 1 to 4 to the Concentration Regulations).</p>
<p><b>B. Are there any document legalization requirements (e.g., notarization or apostille)?</b></p>	<p>With respect to foreign economic entities it is necessary to submit extracts from trade (bank) registers of the countries in which central bodies of management of these economic entities are registered officially.</p> <p>In addition, the representatives' office of a foreign economic entity in Ukraine must submit a copy of the registration document, an extract from the trade (bank) register of the country in which the central body of management of the economic entity is registered officially, the power of attorney for performing the functions of a representative which should be drawn up according to laws of the country in which the central body of management of the foreign economic entity is registered officially.</p> <p>The extract from the register and the power of attorney must be certified notarially at the place of issue, must be duly legalized at the consulates which represent the interests of Ukraine if the international treaties of Ukraine provide for otherwise and must be accompanied with the respective translations into Ukrainian which should be duly certified.</p> <p>On January 10, 2002 Ukraine joined the Convention of October 5, 1961 which repealed the requirement concerning the legalization of foreign official documents.</p> <p>Article 3 of the Convention provides for, in particular, that making apostilles (they are provided for by Article 4 of the Convention) by a competent body of the state in which the relevant document was drawn up is the sole formality which may be required for the certification of, first, the signature and status of the person who signed the relevant document and, second, the seal or stamp of the document if there is the seal or stamp.</p>
<p><b>C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?</b></p>	<p>No</p>

**9. Translation**

<p><b>A. In what language(s) can the notification forms be submitted?</b></p>	<p>Details such as the names of the parties must be provided in Ukrainian, Russian and English. All documents submitted in a foreign language must also be accompanied by a Ukrainian translation which must be properly certified.</p>
---	---

<p><b>B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.</b></p>	<p>All the submitted documents and pieces of information in a foreign language must be accompanied with a translation into Ukrainian which must be certified in accordance with the established procedure (paragraph 4 of point 1 of Annex 1 to the Concentration Regulations).</p>
--	---

## 10. Review periods

<p><b>A. Describe any applicable review periods following notification.</b></p>	<p>Concentration which requires authorization in accordance with the Law of Ukraine "On the Protection of Economic Competition" is prohibited until it is authorized.</p> <p>In 15 days from the date of the receipt of the application, the application is considered to be accepted for consideration unless within the period a state commissioner of the Antimonopoly Committee of Ukraine, the head of its territorial office returns the application to the applicant and informs that the application and other documents do not meet the requirements to be established by the Antimonopoly Committee of Ukraine and that this fact is the obstacle to their consideration.</p> <p>If the participant in concentration refuses to give another participant in the concentration the documents and other pieces of information which are necessary for considering the application by the Antimonopoly Committee of Ukraine or by an administrative board of the Antimonopoly Committee of Ukraine, a state commissioner of the Antimonopoly Committee of Ukraine, on the basis of the applicant solicitation, must order the participant in the concentration to give such information within a fixed period.</p> <p>The applicant must be informed about the order. The application is considered to be accepted for its consideration when the complete information which is provided for by the order has been received.</p> <p>The Antimonopoly Committee of Ukraine or an administrative board of the Antimonopoly Committee of Ukraine must consider an application for authorizing concentration within a 30 day period from the date when the application was accepted by the relevant body of the Antimonopoly Committee of Ukraine.</p> <p>If grounds for the prohibition against the concentration are found and if it is necessary to carry out a complex thorough research or an expert examination, the relevant bodies of the Antimonopoly Committee of Ukraine must start the consideration of a case concerning the concentration, this fact must be fixed in an order and the applicant must be notified of this fact in written form.</p>
---	--

	<p>The period of the consideration of a case concerning the concentration must not exceed three months. The course of the period starts from the date when the complete information was submitted by the applicant and when an expert conclusion was received. If during the period of the case consideration bodies of the Antimonopoly Committee of Ukraine do not arrive at a decision, it is considered that the concentration is authorized.</p> <p>The last day of the period of the case consideration is considered to be the day of taking a decision on authorizing the concentration (part 5 of Article 24, parts 2 and 4 of Article 26, part 1 of Article 28 of the Law of Ukraine "On the Protection of Economic Competition").</p>
<p><b>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</b></p>	<p>If concerted actions or concentration is carried out with the use of competition procedures (tenders, auctions, competitions, etc.), an application may be submitted both before and after the competition procedure within a 30 day period from the date when the winner was awarded the victory unless laws provide for otherwise (part 4 of Article 26 of the Law of Ukraine "On the Protection of Economic Competition").</p>
<p><b>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</b></p>	<p>If grounds for the prohibition against the concentration are found and if it is necessary to carry out a complex thorough research or an expert examination, the relevant bodies of the Antimonopoly Committee of Ukraine must start the consideration of a case concerning the concentration, this fact must be fixed in an order and the applicant must be notified of this fact in written form. A list of pieces of information to be submitted by the applicant to bodies of the Antimonopoly Committee of Ukraine for their taking a decision on the case must be attached to the notification of the beginning of the case consideration.</p> <p>The period of the consideration of a case concerning the concentration must not exceed three months. The course of the period starts from the date when the complete information was submitted by the applicant(s) and when an expert conclusion was received. If during the period of the case consideration bodies of the Antimonopoly Committee of Ukraine do not arrive at a decision, it is considered that the concentration is authorized.</p> <p>The last day of the period of the case consideration which is provided for by paragraph 1 of this part is considered to be the day of taking a decision on authorizing the concentration.</p> <p>The case consideration must be suspended if it is impossible to consider the case until another case having relation to the original case has been arranged by a body of the Antimonopoly Committee of Ukraine, a court of justice, a court of arbitration or until a different matter having relation to the original case has been arranged by a state body. An order relating to the suspension and resumption of the case consideration by bodies of the Antimonopoly Committee of Ukraine must be issued and the applicant must be notified of the order.</p> <p>Bodies of the Antimonopoly Committee of Ukraine must resume the case consideration when circumstances which caused the suspension of the case consideration are eliminated.</p> <p>The course of the period of the consideration of a case stops from the date when the consideration of the case was suspended. The course of the period of the consideration of a case continues from the date when the consideration of the case is resumed (parts 1, 3 and 4 of Article 30 of the Law of Ukraine "On the Protection of Economic Competition").</p> <p>Laws of Ukraine provide for no procedures which would ensure the</p>

	completion of the relevant agreement outside the country before the expiry of the period of considering the application (case) concerning the concentration of economic entities.
<b>D. What are the procedures for accelerated review of non-problematic transactions, if any?</b>	Laws of Ukraine provide for no possibility of shortening the periods within which applications and cases which concern authorizing the concentration of economic entities must be considered.

## 11. Waiting periods / suspension obligations

<b>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.</b>	<p>The application shall be deemed as taken for consideration upon obtaining the full information, provided by this direction.</p> <p>The application is not entertained if the formal requirements for application are not respected.</p> <p>The waiting period is when the Antimonopoly Committee requests the missing information; the court suspended the permission procedure until rendering his decision in the case that concerns merger parties.</p>
<b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b>	No
<b>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to</b>	<p>No</p> <p>If the transaction is realised without the permission, the Antimonopoly Committee applies the sanctions against the parties of transactions</p>

<p>permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Yes</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>No provisions</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>No</p>
<p>G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>See 11 C</p>

## 12. Responsibility for notification / representation

<p>A. Who is responsible for</p>	<p>Participants in concentration, the bodies of power, the bodies of local self-government, the bodies of administrative and economic</p>
----------------------------------	---

<p><b>notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</b></p>	<p>government and control which within their powers take decisions concerning concentration must apply to the Antimonopoly Committee of Ukraine for its authorizing concentration.</p> <p>The following are considered to be participants in concentration:</p> <ul style="list-style-type: none"> <li>· economic entities with respect to which merger or addition is being carried out or must be carried out;</li> <li>· economic entities which are obtaining or intend to get control over an economic entity or economic entities with respect to which control is being got or must be got;</li> <li>· economic entities the assets (property), stocks (shares) of which are being purchased (as property), got for management (use), lease (leasing), concession or must be purchased and their purchasers (the obtaining persons), acquirers;</li> <li>· economic entities which are or intend to be the founders of (participants in) a newly-established economic entity. An economic entity the assets (property), stocks (shares) of which are included in the authorized capital stock of the newly-established economic entity shall also be considered as a participant in the concentration if one of the founders is a body of executive power, a body of local self-government, a body of administrative and economic management and control;</li> <li>· natural and legal persons linked with the mentioned participants in concentration with relations of control, which gives grounds for considering the relevant group of persons, in accordance with Article 1 of the Law of Ukraine "On the Protection of Economic Competition," to be a single economic entity.</li> </ul> <p>Participants in concerted actions and concentration, bodies of power, bodies of local self-government, bodies of administrative and economic management and control must submit a joint application. If the participant in concentration refuses to give another participant in the concentration the documents and other pieces of information which are necessary for considering the application by the Antimonopoly Committee of Ukraine or by an administrative board of the Antimonopoly Committee of Ukraine, a state commissioner of the Antimonopoly Committee of Ukraine, on the basis of the applicant solicitation, must order the participant in the concentration to give such information within a fixed period.</p> <p>The applicant must be informed about the order. The application is considered to be accepted for its consideration when the complete information which is provided for by the order has been received.</p> <p>An application for the Committee's giving its conclusions concerning the advisability of establishing an industrial and financial group, concerning the technical and economic substantiation of the group and concerning the general agreement on joint activities having relation to the production of final products of the group is submitted by a person (persons) empowered by the initiators of the establishment of the group.</p> <p>The lessor must submit an application for giving conclusions concerning the possibility of leasing and the conditions of a contract of leasing an integrated property complex of an enterprise or its structural subdivision which is state or communal property or is owned by the Autonomous Republic of the Crimea to the relevant body of the Antimonopoly Committee of Ukraine. This application may be submitted simultaneously with the lessee's application for authorizing the concentration (Article 23 and part 1 of Article 26 of the Law of Ukraine "On the Protection of Economic Competition"; point 3.1 of the Concentration Regulations).</p>
--	---

<b>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</b>	See the answer to question 11B.
<b>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</b>	Laws of Ukraine provide for no special rules which would define who might represent the notifying parties.
<b>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</b>	<p>Representatives must submit written documents confirming their powers (in the form of a contract of agency or a power of attorney granted by the participant (participants) in the notified action to represent its (their) interests before the Committee's bodies). In such a document it is necessary to state the following information:</p> <ul style="list-style-type: none"> <li>· the surname, name and patronymic of the representative, his position and place of work;</li> <li>· the mail address, fax and telephone numbers of the representative;</li> <li>· the name of the economic entity (entities) the interests of which the representative is empowered to represent.</li> </ul> <p>In the document it is also necessary to state that the participants in the concentration which appointed the representative or legal successors of the participants bear, first, a risk of negative consequences which can result from the review of the decision taken on the basis of unauthentic information submitted by the representative and, second, responsibility for the submission of such information. See answer to question 6B.</p>

### 13. Filing fees

<b>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?</b>	<p>Fees are exacted in connection with the submission of applications for authorizing concentration and for giving preliminary conclusions with respect to concentration, namely in case of:</p> <p>the submission of applications: first, for authorizing concentration, fees are in an amount of 300 times the taxdeductible minimum citizen income, second, for giving preliminary conclusions concerning these matters in an amount of 220 times the tax-deductible minimum citizen income;</p> <p>the submission of applications for giving preliminary conclusions — in an amount of 80 times the tax-deductible minimum citizen income;</p> <p>the issue of additional certified copies of decisions concerning concentration — in an amount of 0.5 taxdeductible minimum citizen income for each copy (Article 34 of the Law of Ukraine "On the Protection of Economic Competition").</p>
<b>B. Who is responsible for</b>	The fees must be paid by applicants.

<b>payment?</b>	
<b>C. When is payment required?</b>	Payment of the fee shall be effected before submitting an application.
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	Application shall be accompanied with a document confirming payment of the fee for its submission (payment order for transfer of the fee with a record of a banking institution, or a receipt). Application without attached documents confirming payment of the fee for its submission shall remain unprocessed, whereof the applicant shall be informed in writing. The application shall be left without consideration in case of non-submission by the applicant of the documents confirming payment of the fee for its submission, within 30 days upon receipt of a notice by the applicant of leaving the application without consideration (part 4 of Article 34 of the Law of Ukraine «On protection of economic competition»; paragraphs 3.9 and 4.2.6 of the Regulations for concentration).

<b>14. Confidentiality</b>	
<b>A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?</b>	<p>The Antimonopoly Committee of Ukraine or its territorial office may promulgate information about concentration by publishing it in the printed or electronic media or may promulgate it in a different way if the information has already been published or if the applicant does not object to the promulgation (part 4 of Article 27 and part 6 of Article 31 of the Law of Ukraine "On the Protection of Economic Competition").</p> <p>Information on claimed concentration, specifically on: corporate form of participants of concentration, their location and location of their representative offices, affiliates, type and content of concentration, specifying the date of submitting suggestions and comments to the Committee in respect of concentration, may be published in printed or electronic media, in particular, placed on the official website of the Committee in the Internet or published by the Antimonopoly Committee of Ukraine in any other way.</p> <p>The applicant (representative) and state executive officer of the Committee (employees of the Committee by order of the state executive officer) may hold consultations with each other on the opportunity to publish the content of information, which may be published. In this case, the applicant may submit the relevant information for publishing agreed with the state executive officer of the Committee or individually compiled information.</p> <p>Information on acceptance of the instruction on starting the examination of the case initiated as a result of detecting reasons for prohibition of concentration, shall be placed on the official website of the Committee at least within 5 business days upon acceptance of the instruction.</p> <p>Information on acceptance of the instruction, excluding data specified above, shall contain:</p> <ul style="list-style-type: none"> <li>date of placement of information in the Internet;</li> <li>details (date, number) of the instruction on starting the</li> </ul>

	<p>examination of the case on concentration;  data on engaged markets;  name and location of participants of concentration important for evaluation of influence of concentration on competition in the engaged markets;  calendar date being a deadline for acceptance of objections, evidence to confirm them, and considerations in respect of the claimed concentration from individuals and legal entities, and the method for their submission.</p> <p>Information submitted by applicants or other persons in connection with examination by the Committee of the application, case on concentration shall not be disclosed with the exception of the aforesaid information on planned concentration and any other open information in cases, when its disclosure is required for performance of tasks by the Committee provided for by the legislation, and if the right for receipt of such information by the relevant persons is provided by the law, in particular, to persons participating in the case, for protection of their rights, which may be violated as a result of monopolization or considerable limitation of competition in the market caused by concentration.  (paragraphs 4.2.8, 4.3 and 5.1 of the Regulations for concentration).</p>
<p><b>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</b></p>	<p>If based on the results of examination of the case on claimed concentration resolution is to be made on its prohibition because of its leading to monopolization or considerable limitation of competition in the market in its entirety or in a considerable part thereof, the state executive officer of the Committee may give a prior notice to that effect to the applicant and give an opportunity to the applicant to provide evidence of absence of negative consequences. The applicant shall be entitled to familiarize with the materials of the case required for provision of additional evidence to protect their rights (paragraph 4.8 of the Regulations for concentration).</p>
<p><b>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</b></p>	<p>For third parties, laws of Ukraine provide for no access to notification materials.</p> <p>The relevant information, in particular, trade secret, may be provided to investigation bodies or court in accordance with the legislation.</p>
<p><b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b></p>	<p>See answer to question 14.A.</p> <p>If the parties submitting an application consider that their interests will be infringed in case of any publication or disclosure of information submitted in accordance with the Regulations for concentration, such information shall be submitted separately in a sealed envelope, and with a record "information with limited access". Information type shall be specified with explanations why this information may not be disclosed or published. In this case, information forming a trade or other secret as provided for by the law shall be separated from confidential information.</p> <p>If the application is submitted by more than one person in connection with foundation, merger, acquisition etc., information with limited access may be submitted separately and be referred to as a supplement. In such cases, package of documents added to the application shall be deemed full upon receipt of all supplements</p>

<p><b>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</b></p>	<p>(section 4 of Annex 1 to the Regulations for concentration).</p> <p>1. The most specific norms of co-operation in the investigation and consideration of cases concerning competition are contained by the following official intergovernmental agreements, to which Ukraine is a party:</p> <ul style="list-style-type: none"> <li>· Treaty of Conducting Concerted Antimonopoly Policy by Countries of the Commonwealth of Independent States (of 25 January 2000).</li> <li>· Treaty Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation Signed to Co-operate in the Development of Competition (of 13 July 2000).</li> <li>· Treaty Between the Cabinet of Ministers of Ukraine and the Government of the Republic of Georgia Signed to Co-operate in the Development of Competition (of 13 July 2000).</li> <li>· Treaty Between the Cabinet of Ministers of Ukraine and the Government of the Republic of Azerbaijan Signed to Co-operate in the Development of Competition (of 13 July 2000).</li> </ul> <p>2. The interdepartmental co-operation in the improvement of both conceptual and legal principles of competition policy, the exchange of experience in conducting investigations are provided for by agreements which the Antimonopoly Committee of Ukraine has signed with the relevant authorities of the Republic of Byelorussia, the Republic of Bulgaria, the Lithuanian Republic, the Republic of Poland, the Slovak Republic and the Czech Republic. The major goals of these agreements were the establishment of professional contacts and the exchange of general information rather than professional co-operation in the consideration of cases concerning violations of competition laws because the agreements had been concluded at the time when the relevant competition authorities and competition laws were in the making. At the present stage the Committee has assigned itself the task to renew the mentioned agreements qualitatively with a view to creating the appropriate prerequisites for their practical application in the consideration of violations having international character. All these agreements are publicly available.</p>
<p><b>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</b></p>	<p>The AMC may also exchange information and cooperate with foreign competition authorities as provided in international treaties.</p> <p>An applicant is able to separately identify the information which it considers should be treated as confidential by the AMC and not publicly disclosed. Such information needs to be clearly marked as “confidential” and the applicant is required to provide reasons to the AMC as to why the information should not be disclosed. If the applicant does not identify information as confidential it may be published.</p>
	<p>Information defined as being of limited access or confidential, including commercial and banking information, must be maintained and stored according to legislation. All confidential information must be sent to the AMC in separate, sealed envelopes marked ‘confidential’.</p>

## 15. Transparency

<p><b>A. Does the agency publish an annual report? Please provide the web address if available.</b></p>	<p>Yes, the annual report is published on the web site of the AMCU <a href="http://www.amcu.gov.ua">www.amcu.gov.ua</a></p>
<p><b>B. Does the agency publish press releases related to merger policy or investigations?</b></p>	<p>No</p>
<p><b>C. Does the agency publish decisions on why it cleared / blocked a transaction?</b></p>	<p>Information regarding the merger can be disclosed or published if such information has previously been made public, or the party does not object to its disclosure. The AMC may publish this information for the purpose of soliciting comments on the transaction from third parties or for providing information about the AMC's final decision, which may be published in the official government journal or otherwise made public.</p>

## 16. Sanctions/penalties

<p><b>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</b></p>	<p>Fines are imposed if:</p> <ul style="list-style-type: none"> <li>· mediators do not observe the conditions under which the purchase of stocks by them is not considered to be the concentration of economic entities;</li> <li>· provisions of agreed (with bodies of the Antimonopoly Committee of Ukraine) constituent documents of the economic entity established as a result of the concentration are violated and if this leads to the restriction of competition;</li> <li>· concentration is carried out without the relevant permission to be granted by bodies of the Antimonopoly Committee of Ukraine in cases where the permission is necessary;</li> <li>· participants in concerted actions or concentration do not fulfill the requirements and obligations by which the decision authorizing the concerted actions or the concentration were stipulated.</li> </ul> <p>The fines must not exceed 5% of the income (proceeds) obtained by the economic entity from the sale of products (goods, work, services) in the last accounting year directly preceding the year in which the relevant fine is imposed (points 10, 11, 12, 19 of Article 50, part 2 of Article 52 of the Law of Ukraine "On the Protection of Economic Competition").</p>
<p><b>B. Which party/ies are potentially liable?</b></p>	<p>Responsibility for the violations mentioned in the previous point is born by the persons defined in the answer to 12A.</p>
<p><b>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring</b></p>	<p>Yes, accordingly to the Article 52 of the Law on Protection of Economic Competition, bodies of the Antimonopoly Committee of Ukraine shall inflict penalties on associations, business entities for violations such as non-performance by the participants of concerted actions, concentration of requirements and obligations stipulating</p>

<p><b>judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</b></p>	<p>the decision on granting permission for concerted actions, concentration. These penalties shall be inflicted in amount of to one percent of income (revenue) of a business entity obtained from the sales of products (goods, works, services) for the latest accounting year, preceding the year, in which a penalty is inflicted.</p>
---	--

## 17. Judicial review

<p><b>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</b></p>	<p>The applicant, the defendant and a third party have the right to file an appeal to an economic court of justice against complete decisions of bodies of the Antimonopoly Committee of Ukraine or against parts of such decisions within a period of two months from the date when the decision was received. The period may not be renewed.</p> <p>Appeals against decisions of the Antimonopoly Committee of Ukraine, an administrative board of the Antimonopoly Committee of Ukraine and a state commissioner of the Antimonopoly Committee of Ukraine are taken to the Higher Court of Arbitration of Ukraine. Appeals against decisions of an administrative board of a territorial office of the Antimonopoly Committee is taken to the Court of Arbitration of the Autonomous Republic of the Crimea, to regional courts of arbitration, to the Kyiv and Sevastopol City Courts of Arbitration.</p> <p>Subject to sufficient grounds, economic court may terminate the effect of resolution of the body of the Antimonopoly Committee of Ukraine (Article 60 of the Law of Ukraine “On protection of economic competition”).</p>
---	--

## 18. Additional filings

<p><b>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?</b></p>	<p>No, except as stated in the answer to question 9A.</p>
---	---

## 19. Closing deadlines

<p><b>When a transaction is cleared or approved, is there a time period within which the parties must close for it</b></p>	<p>Concerted actions, concentration must be carried out within a year from the date when the decision on authorizing the concerted actions, the concentration was taken unless a longer period is provided for by the decision. If the concerted actions, the concentration are not carried out within the above period, participants in the concerted actions, the concentration must submit</p>
--	---

<b>to remain authorized?</b>	another application for authorizing the concerted actions, the concentration by bodies of the Antimonopoly Committee of Ukraine.
------------------------------	--

## 20. Post merger review of transactions

<b>Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?</b>	Yes
--	-----