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LEGAL ALERT

AMCU Presents Draft Regulation on Block Exemptions in Vertical Concerted Actions

1. The Antimonopoly Committee of Ukraine (AMCU) recently presented draft Regulation on Block Exemptions in Vertical Concerted Actions (Draft). The Draft defines vertical concerted actions which are allowed and do not require an AMCU permit.
2. While the old general Regulation on block exemptions in all concerted actions will stay valid, the vertical concerted actions will soon be regulated separately by the discussed Draft. AMCU is also additionally preparing relevant amendments to the laws to make all provisions on block exemptions harmonized and consistent.
3. The Draft was prepared pursuant to Ukraine's obligations under the EU-Ukraine Association Agreement and adopted an approach based on the EU Commission Regulation # 330/2010. As of now, AMCU plans to adopt only the Draft as a general document defining block exemptions and it has no further plans to adopt any sectorial (e.g. automotive) regulations.
4. The Draft is quite modern from the point of view of current Ukrainian competition laws and it includes several technical novelties. For example, the Draft introduces a number of definitions which are new for Ukraine (active and passive sales, exclusive supply, selective distribution system etc.).
5. Generally, the Draft provides that companies may enjoy exemption in the following vertical agreements (with certain conditions and exceptions):
 - between the supplier and buyer of the goods who have less than 30 % of the market share (respectively, on the markets where they buy and sell relevant goods / services);
 - between an association and its members or between an association and its suppliers if all members of such association are retailers and

none of its individual member's turnover in Ukraine exceeds EUR 25 M¹;

- related to buyer's use of IP rights;
- certain agreements between contractors and sub-contractors.

6. Also, the Draft establishes the cases when companies may not enjoy the provisions of the exemption. Those are (with certain conditions and exceptions):

- vertical agreements between competitors (except for the non-reciprocal agreements);
- restrictions on resale price (except for provisions regarding maximum or recommended prices);
- territorial restrictions and customers' restrictions;
- restrictions of sales to end users imposed on members of selective distribution system;
- restrictions on cross-supplies between members of a selective distribution system;
- restrictions to sell products' components as spare parts to consumers and repairers;
- non-compete clauses with duration over 5 years or indefinite duration;
- obligations of a buyer not to manufacture, purchase, sell or resell certain goods / services after termination of the vertical agreement;
- obligation of a member of a selective distribution system not to sell brands of a particular competitor;
- cases when parallel networks of similar vertical restraints cover more than 50% of the relevant market (special AMCU resolution is required in such cases).

7. The Draft is now under public discussion within business associations, non-governmental platforms and legal community. AMCU plans to finalize and adopt the Draft by the end of this year. Consequently, it is high time for companies to announce any possible reservations and comments they may have to the Draft. Though AMCU is open to any comments or proposals to the Draft and its wording will definitely be polished, it is very unlikely that the Draft will face fundamental amendments.

¹ Turnover of the group of companies for the preceding year is considered for this purpose.

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8. When adopted, the Draft will provide the business in Ukraine with more clarity as to the allowed and forbidden practices in terms of vertical concerted actions.
9. Now it is good time for companies that are engaged in distribution at highly concentrated markets in Ukraine (e.g. pharma distribution) to check whether their relevant Ukrainian arrangements and contracts are compliant with the Draft. It may help them to avoid possible penalties in the future and to assess whether a prior approval of AMCU for the relevant concerted actions is required.

If you have any questions, please contact:

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