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Ukraine - Typical Requirements for Vertical Concerted Actions Approved

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In late October 2017 the AMCU approved the Typical Requirements for Vertical Concerted Actions of Business Entities (hereinafter - the Typical Requirements). The development of the document was due to the commitments undertaken by Ukraine in accordance with the EU-Ukraine Association Agreement.

Prior to the adoption of the Typical Requirements the issues of the AMCU's assessment of restrictions in vertical agreements, e.g. transactions between companies of the product sale chain (e.g. manufacturers and wholesale /retail distributors) was regulated quite superficially, and the regulator's practice could not be called abundant.

Nevertheless, the AMCU's practice of the recent years has been remembered by high-profile investigations in the pharmaceutical sector concerning the conditions of cooperation among foreign manufacturers (importers) of medicinal products and distributors. Some cases have already been completed by the AMCU, with decisions on violations adopted and fines imposed, and are reviewed by courts on legal actions of the involved market participants. Other cases are pending at different stages of investigation at the AMCU.

The Typical Requirements are intended to distinguish prohibited practices from admissible ones and to provide opportunities to businesses to better plan their activities in compliance with the competition law of Ukraine. Thus, the Typical Requirements establish a general presumption that restraints of competition shall be admissible in vertical agreements if the share of the seller and the buyer in the relevant markets for the sale and purchase of goods does not exceed 30%, save for the so-called "hard core" ones.

The document classifies, in particular, the establishment of minimum or fixed prices for resale of goods or the prohibition of the sale of goods in certain territories or to groups (categories) of consumers, with certain exceptions, as "hard core" restrictions. At the same time, such common practices in the Ukrainian market as the introduction of exclusive and selective distribution systems do not generally fall under the prohibited categories, however, subject to the fulfilment of certain criteria.

The AMCU's adoption of the Typical Requirements and its focus on regulating vertical relations indicate the intention of the competition authority to centre on vertical practices. Therefore, we recommend reviewing the organization of external business processes, including commercial policies and similar programs to comply with the new regulation.

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This entry was posted on Thursday, November 23rd, 2017 at 10:00 am and is filed under [Source: OECD](#) > [Antitrust, Ukraine](#)

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