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Breaking a Duopoly: Ukraine's New Approach to Pharmaceutical Distribution

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The Problem

Ukraine's decade-long selective distribution practices in the pharmaceutical market are currently facing unparalleled antitrust scrutiny. This follows the introduction of controversial new regulation that reflect a growing trend: substituting timely, targeted market failure interventions and adequate enforcement with legislative restrictions that are economically unsound and severely undermine decades of the established commercial strategies.

The Current Market Context

The Ukrainian wholesale pharmaceutical distribution market has historically evolved into a duopoly dominated by two major players — BaDM and Optima. Benefiting from political support and substantial investments in developing nationwide distribution networks, these two companies have maintained an undisputed leadership position, collectively controlling over 85% of the market. Numerous and repeated attempts by the government to dismantle this distribution monopoly have yielded no tangible results.

The Antimonopoly Committee of Ukraine (AMCU) has been conducting a year-long investigation into potential abuse of dominance by these distributors. Despite recent public promises from the AMCU leadership to finalize the investigation and adopt a decision soon, it seems unlikely that the case will lead to anything beyond financial penalties. Meaningful structural remedies that could genuinely open the market to broader competition are even less probable. The core problem persists: no other player — particularly under the challenging conditions of wartime — is willing or is able to invest significant resources in developing their own nationwide pharmaceutical distribution infrastructure to challenge the entrenched duopoly.

At the same time, pharmaceutical manufacturers and importers operating in Ukraine have developed internal policies over the years which set a number of qualitative and quantitative criteria for selecting distribution partners to ensure compliance with comprehensive quality and safety requirements — criteria that, in practice, only BaDM and Optima are able to meet.

Regulatory Response

In response to this market failure, the Ukrainian government earlier this year opted for a legislative solution, introducing imperative legal provisions into pharmaceutical legislation that drastically alter market rules — particularly those governing the relationship between manufacturers, importers, and distributors.

The central new requirement limits the volume of any given medicinal product that can be sold to a single distributor to no more than 20% of total annual sales for that product. In addition, manufacturers and importers must offer identical commercial conditions — including price, delivery terms, and payment deadlines — to all distributors. This restriction does not apply to the so-called original (innovative) medicinal products, the list of which is maintained by a specialized state agency.

AMCU's Advocacy Position

In early May, following its advocacy mandate, the AMCU issued mandatory recommendations to nearly all market participants (160 companies, including pharmaceutical manufacturers and importers). The core message was clear: manufacturers should avoid setting distributor selection criteria that unjustifiably favor certain distributors (i.e. BaDM and Optima) which may lead to a distortion of competition in the pharmaceutical distribution market.

Notably, these recommendations were also addressed to manufacturers of original medicinal products, even though the "20% quota" rule does not formally apply to them. This move reveals several important insights:

- The AMCU's position appears to be that it is not strictly bound by sector-specific pharmaceutical legislation. While it acknowledges the new regulations, the AMCU operates under a broader competition protection mandate that covers the entire pharmaceutical distribution market.
- The new "20% quota" restriction is likely to serve as a reference point for the AMCU. However, based on its recommendations, it is clear that all market players are expected to comply with economically justified and competition-friendly selective distribution practices.
- Even manufacturers of original medicinal products, formally exempt from the "20% quota" requirement, will conceivably need to review and adapt their distribution policies so as to ensure their selective distribution models do not trigger AMCU concerns under the new regulatory environment and to align with evolving regulatory expectations.
- The fundamental problem — the absence of new entrants capable of disrupting the BaDM–Optima duopoly — have few chances to be resolved. However, manufacturers and importers who continue operating under outdated models without adjusting their selective distribution systems and commercial policies may find themselves under AMCU scrutiny.
- Consequently, the pharmaceutical sector should anticipate increased investigations and antitrust cases initiated by the AMCU. Yet these efforts, while having a prospect to improve formal compliance, are barely feasible to correct the underlying market failure or meaningfully intensify competition in pharmaceutical distribution.

Between Duopoly and Regulation

Ukraine's experience should serve as a cautionary tale. Introducing rigid, administratively imposed restrictions in the absence of real market alternatives rarely leads to sustainable competitive outcomes. What makes matters worse, it risks destabilizing the well-established commercial ecosystems and undermining operational efficiency, particularly in a market as strategically important as pharmaceuticals.

Presumably, a better strategy would have been to focus on enhancing competitive conditions through targeted enforcement, facilitating market entry opportunities, and addressing specific abuses of dominance where proven — not to enforce blanket rules that may ultimately harm both market performance and consumer welfare, while the broader question of fostering genuine competition remains unresolved.

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