January 2018

UKRAINE: VERTICAL BLOCK EXEMPTION REGULATION CAME INTO FORCE

On 5 December 2017, the Vertical Block Exemption Regulation (the Regulation) came into force in Ukraine. The Regulation applies to vertical agreements, such as distribution agreements, as well as certain agency and non reciprocal agreements between competitors. It allows such agreements to benefit from a presumption of legality if they fall within the rules of the Regulation without the need to apply for the prior approval of the Antimonopoly Committee of Ukraine (the AMC). The key provisions are outlined below.

I. Agreements within the Safe Harbour: for the block exemption to apply, the market share of both the supplier and buyer must not exceed 30% in their respective markets. Agreements between associations of undertakings and their members or suppliers may be covered by the Regulation so long as the market share thresholds are met and no individual member's turnover in Ukraine exceeds €25 million. Subcontracting agreements and ancillary restraints related to the assignment or use of intellectual property rights can also fall within the Regulation, subject to certain conditions. However, in all scenarios, the AMC may decide that the Regulation does not apply if there are parallel networks of similar vertical restraints covering more than 50% of the relevant market.

II. Agreements that require an individual exemption: if the vertical agreement contains clauses that are not covered by the Regulation and that are considered as "anticompetitive concerted actions" which restrict/may theoretically restrict competition, then the clauses are unlawful and prohibited unless the AMC grants an individual exemption for the clauses concerned. Unlike EU competition law, Ukrainian law does not provide for a system of "self-assessment" of restrictive clauses but rather requires companies to notify the AMC for individual exemption.

III. Agreements containing so called "hard core" restraints: Any agreement that contains hard core restrains cannot benefit from the Regulation (the entire agreement loses the benefit of the block exemption). Hard core vertical restraints include resale price maintenance (with an exception for maximum and recommended prices) and certain territorial and customer restrictions.

IV. Non-hard core restrictions: certain clauses that restrict competition are not covered by the Regulation but the remainder of the vertical agreement concerned could however benefit from the block exemption. This category includes certain non-compete clauses for longer durations than 5 years and post-term black-out obligations, depending on the length and circumstances.

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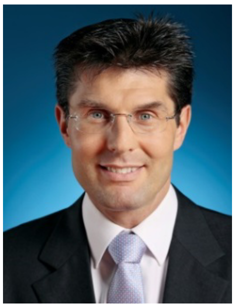

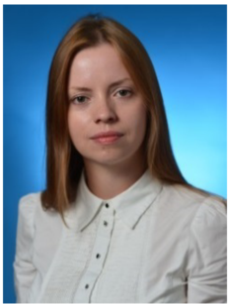

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