

April 28, 2016

## Code of Good Practice in the Pharmaceuticals Industry

Dear Sirs,

On April 19, 2016 Association of European Business (hereinafter – “**AEB**”) and the Russian Federal Antimonopoly Service (hereinafter – the “**FAS**”) presented the Code of Good Practice in the Pharmaceuticals Industry (hereinafter – the “**Code**”).

The full text of the Code (both in Russian and English) is available at the official web-site of the antimonopoly authority (<http://fas.gov.ru/documents/documentdetails.html?id=14513>).

Below is short outline of the Code.

### 1. General provisions

The Code continues new trend in Russian anti-trust regulation by creating rules of conduct by industry associations and unions in collaboration with the FAS. Among the most interesting examples are the Code of Good Practice between Retail Chains and Suppliers of Consumer Goods and the Code of Conduct between Vehicle Manufacturers and Auto-Distributors on the Markets of Sale of New Vehicles and Spare Parts to Them.

These acts are important in law enforcement. Often they are created when the antimonopoly authority is particularly active in the market and are result of the reached compromise: players in a particular market change their behavior according to such rules while the FAS decreases the level of its supervision over them. Therefore, we expect that the Code will influence the manufacturers' conduct in Russia in part of compliance with its rules for mitigation of risks of violation of the Russian competition legislation.

In order to adhere to the Code, potential participant should sign the **special accession declaration** attached to the Code, send it to AEB and publish on its official web site. AEB further also publishes the information on accession to the Code by the participant and send this information to the FAS.

### 2. Selection of distributors

The Code states that the participants shall endeavor to ensure the implementing **effective system for monitoring** compliance with legislation, including anti-corruption legislation and the law on the protection of competition, in particular through **adoption of a commercial policy**.

The Code provides for criteria of economic and technological justification, compliance with the Russian legislation (and the EAEU legislation) as well as with foreign legislation, if applicable to the participant, for selection of distributors by manufacturers .

The Code introduces the requirements of **clear, transparent and measurable, objectively justified and nondiscriminatory selection criteria for distributors**. Commercial policy should include regulatory procedure and timeframes of selection process, standard contract terms and conditions, discount/bonus procedures and mechanisms, general payment terms and procedure for informing the existing distributors of the commercial terms and any changes (and be available on the official web site of the participant).

The Code provides for **approximate (not exhaustive) criteria** that may be taken into consideration during the selection procedure. Apart from standard criteria such as absence of tax arrears, necessity

to have licenses and some other, there is a criterion stating that there are no documented violations of legislation on combating corruption including foreign legislation if it is applicable to the participant.

It is also interesting that the Code states that for audit purposes the participants apart from Russian legislation may take into account **the FCPA and the UK Bribery Act**.

One more interesting provision relates to possibility by the participants independently determine in the commercial policy **a number of distributors** which is economically and technologically justified. This provision would allow manufacturers without violation of the Russian competition legislation to establish their own business model and not to enter into agreements with all potential distributors if this is not economically justified.

### **3. Termination of cooperation with distributors and other interesting provisions**

The Code lists samples of **grounds for termination of cooperation** with distributors such as being in the process of liquidation, absence of necessary licenses, establishment of the fact of involvement into corruption offences, arrears under the contract. The list is also not exhaustive and the participants may introduce other grounds in their commercial policies.

The Code introduces provisions making difference between definitions of **discriminatory conditions** in contracts and different conditions that are not deemed to be discriminatory. Conditions that differ in contracts with several distributors are not deemed to be discriminatory, if products being subject matter of contracts relate to different markets, and if products are traded on the same market, provided that the parameters of transactions are not of equal value, which makes the application of a variety of terms and conditions economically justified (for example, the price per unit may be lower for large product purchases in natural terms or if payment includes advance payment rather than commercial loan).

The Code sets forth that the participants may offer bonuses and discounts; however, they should apply on a non-discriminatory basis (for example, for achievement of certain value or volume of purchases or conclusion of a contract with a state customer).

After 1 year of application of the Code, the participants will analyze the respective results and consider possibility of creation special collegial body for resolution of disputes under the Code.

**We believe that the Code introduces a number of important rules not provided for by the current legislation that would influence further activity of the players in the pharmaceuticals market. Although the Code is not obligatory, it is likely that the pharmaceutical companies will have to review their existing commercial policies (or adopt them in case of absence) and standard distribution contracts to prevent the risks of conflicting with antimonopoly legislation in day-to-day business and excessive attention from the FAS side.**

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Hope that the information provided herein would be useful for you.

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If you have any questions, please, do not hesitate to contact the Partner of ALRUD Law Firm – Vassily Rudomino ([vrudomino@alrud.com](mailto:vrudomino@alrud.com)).

Kind regards,

**ALRUD Law Firm**

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