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CLASSIFICATION OF CONTRACTS USED IN THE WHOLESALE MARKET

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У науковій доповіді досліджено різні форми та види договорів, що застосовуються на ринку оптової торгівлі, проаналізовано природу факторів, що лежать в основі класифікації такого роду договорів. Автором ґрунтовно опрацьовано доктринальні та нормативні джерела й запропо-

новано авторську класифікації договорів, що застосовуються на ринку оптової торгівлі.

Ключові слова: оптова торгівля, ринок оптової торгівлі, договір, договір купівлі-продажу.

В научном докладе исследованы различные формы и виды договоров, применяемых на рынке оптовой торговли, проанализировано природу факторов, лежащих в основе классификации такого рода договоров. Автором основательно проработаны доктринальные и нормативные источники и предложена авторская классификации договоров, применяемых на рынке оптовой торговли.

Ключевые слова: оптовая торговля, рынок оптовой торговли, договор, договор купли-продажи.

There are quite conflicting views on the nature of the factors that underlie the classification of sales contracts in the legal literature.

The general basis for the classification of contracts in the wholesale market is the subject composition (the main participants in trade, intermediaries, auxiliary subjects), the purpose of the contract (sale of goods, sales promotion, sales support), the subject of the contract (sale of goods, funds, services, special objects – electricity, petroleum products, etc.), the place of contracts (wholesale market, exchange, trading platforms).

The group of contracts for the wholesale sale of goods should include contracts with the functions of the organization of the process of commodity-money exchange, wholesale turnover and, in general, the wholesale market. Specifically, we are talking about contracts of sale on exchanges, auctions, wholesale markets, competitive bidding, exhibitions and fairs.

The classification of these atypical wholesale contracts does not fit into the rigid framework of the primary constituent features. If the exchange contract, the contract of auction purchase and sale can be attributed to specific contracts, the contracts of sale in specialized wholesale markets, exhibitions and fairs are realizable. But the whole group is united by the fact that the contracts are aimed at the organization of wholesale turnover, the formation of the wholesale market of goods.

Infrastructure facilities such as wholesale fairs, wholesale markets, public auctions and commodity exchanges have broader functions in the field of wholesale trade. They are also called the organizers of wholesale trade. The main task of the Institute of wholesale and organized market organizers is to create appropriate conditions for the conclusion of contracts in accordance with the provisions of civil law.

The commodity exchange is fundamentally new for Ukraine and the most complex organizer of wholesale turnover and the system of contractual relations of purchase and sale. It is an entity with the rights of a legal entity, which organizes wholesale turnover through exchange public trading on a regular basis and the conclusion of exchange transactions.

transactions on exchanges are usually made through stock or independent brokers. Consequently, the subject composition of exchange trading is limited. The object of exchange trade is the exchange commodity of a certain kind, which is inherent in the mass production, interchangeability and can be reduced to standard homogeneous lots.

There are four standard contracts on the exchanges: purchase and sale of real goods with immediate delivery (spot contracts), forward transactions for the future term, i.e. with a deferred term of delivery of goods, futures transactions under standard contracts, option transactions.

Normative classification of contracts in the wholesale sphere follows from the provisions of economic legislation, since the legislator distinguishes three types of contracts through which economic and commercial activities are carried out, ensured and mediated.

In our opinion, wholesale and business contracts due to which the wholesale and trading business activities include: supply contracts, wholesale sales, distribution and dealer agreements, logistics, energy supply, trading agreements, exchanges, auctions, public auctions, wholesale fairs, which are variations of the contract of sale.

It is necessary to refer to wholesale economic contracts at the expense of which wholesale and trade economic activity is provided contracts which promote establishment of contractual communications, search of contractors, increase in sales of production, namely: Agency, broker, advertizing, information, marketing contracts, Commission, consignment contracts, contracts of commercial concession (franchising), commercial

mediation, sale and lease of means of production, and also the contracts which are inseparably connected with process of delivery and transfer of goods: storage (warehouse agreements), transportation, forwarding, procurement, packaging, unloading of goods.

In turn, the group of contracts, mediating (accompanying, improving, contributing) wholesale economic and commercial activities, include contracts, insurance, banking, credit, other financial contracts, factoring operations, service and warranty contracts.

At the same time, we believe that the division of contracts is limited in the current legislation, taking into account the scope of existence of economic relations in the wholesale market.

Thus, in the sphere of economic activity, wholesale contracts should be considered in a broad sense and grouped depending on the legal relations arising at the stages:

- establishment of business relations (Agency, brokerage, advertising, information, Commission, consignment contracts, contracts of commercial concession (franchising), commercial mediation);
- ensuring the paid transfer of rights to lots of goods (contracts on exchanges, auctions, public auctions, wholesale fairs, contracts of logistics, sales, energy supply);
- implementation of economic and commercial activities (supply, wholesale, distribution, dealer agreement);
- support (mediation) of economic and commercial activities (insurance, banking, credit, other financial contracts, factoring operations, service and warranty contracts, sale and lease of production facilities, leasing);
- providing wholesale trade services (logistics services, storage (warehouse agreements), transportation, forwarding, procurement, packaging, unloading of goods, marketing, merchandising contracts);
- internal legal relations (internal wholesale economic contracts: planned, calendar, production, technological, implementation contracts, commercial, emerging between branches, structural units of the business entity and a legal entity and relating to the establishment of requirements for product quality, continuous technological cycle of production and supply of wholesale consignments, sales, ensuring the promotion of

goods in the market, stimulating the activities of structural units, the preservation of trade secrets).

The purpose of contracts in the wholesale sphere is formed on the basis of provisions of the current legislation and is defined for use of goods (lot of goods) in business activity or for other purposes not connected with personal, family, house or other similar use.

Although this objective is limited to supply contracts, it should be extended to all contractual forms of wholesale trade relations.

Thus, the obligatory and necessary property of contracts in the wholesale market is their commercial and paid character.

The universality of wholesale and trade activities and its extension to various spheres of commercial relations, which combine supply, sale, logistics, sales, energy supply, exchange trade in wholesale parties, contracting of agricultural products, affects the nature of contracts concluded by business entities in this area.

Therefore, contractual structures of interaction in the wholesale market are predominantly of a mixed nature of contractual obligations.

In addition, the share of non-contracts, the rules of which are formed by the subjects of wholesale legal relations and business customs, is also significant.

This follows not only from the specifics of wholesale economic relations, but also from the principles of economic management and the foundations of economic law and order, which proclaim the freedom of business, economic diversity and freedom of contractual relations, which follows from the provisions of civil law.

Unfortunately, the legislator does not regulate wholesale contracts at all, especially does not establish their varieties.

However, the scientific substantiation concerning the importance of wholesale trade as one of the main, system-forming forms of economic and trade activity allows us to refer to the relevant forms enshrined in the norms of the Civil and Economic codes under the named wholesale contracts.

That is, supply, logistics and sales; energy supply; contracting of agricultural products, exchange transactions; agency agreement, lease, exchange, storage in a warehouse should be attributed to the defined

contracts in the field of wholesale economic and trade activities, which are defined in the economic legislation.

The list of non-defined contracts, while much more often used in the implementation of wholesale economic and commercial activities is much wider and interesting for scientific research.

Among the non-defined agreements such of them requires legislative regulation: wholesale contract, distribution contract, dealer contract, contracts of logistics, sales, contracts of packaging, unloading of goods, lease contracts of retail space for the sale of goods, contract for the provision of marketing, marketology, merchandising, advertising, information services, contract for the implementation of plans for the sale of goods, contracts to maintain the presence of goods at the place of implementation, contracts in the field of e-Commerce, domestic economic contracts.

The classification of contracts that are used in the wholesale market is certainly affected by the legal status of the subjects of wholesale legal relations, which are grouped into basic, the main subjects of the wholesale market; intermediaries, representatives; organizers of the wholesale market; security and auxiliary subjects of the wholesale market.

The importance for wholesale trade, the combination of a wide range of obligations, the functionality of the subjects of wholesale economic and commercial activities, which create the legal basis for the conclusion of subsidiary and related agreements predetermines the possibility of allocating wholesale contracts on legal status:

- basic wholesale contracts due to the implementation of which the wholesale trade (wholesale contract, supply, distribution contract) is carried out);
- the main wholesale contracts, which are concluded for the purpose of transfer of ownership of the lot of goods (contracts on exchanges, auctions, public auctions, wholesale fairs, warehouses, trading houses, contracts of logistics, sales, energy supply, dealer contracts, e-Commerce);
- representative wholesale agreements, parties to which are commercial intermediaries and market participants, acting on their own behalf or on behalf and in the interests of the manufacturer, buyer, seller (commercial concession, Agency, brokerage, trading, Commission agreements);

- interim wholesale agreements that accompany the wholesale business operations (logistics services, warehousing (warehouse agreements), transportation, forwarding, processing, packing, unloading of goods, contracts of service and warranty maintenance, on-farm contracts);
- auxiliary wholesale contracts, the implementation of which accelerates the movement of products from the manufacturer to the retailer (insurance, banking, credit, other financial contracts, factoring operations, sale and lease of means of production, leasing);
- information contracts in wholesale legal relations (advertising contracts, contracts for marketing, marketing research, provision of information services).

The given classification has more detailed character, in comparison with traditional (organizational, intermediary, realization contracts, the promoting trade contracts), covers various spheres of functioning of wholesale economic and trade activity and, in our opinion, corresponds to modern development of economic legal relations in the market of wholesale trade.

Thus, the system of contracts in the wholesale market can be classified:

1. for the scope of economic activity and the nature of economic relations - contracts that arise at the stages of establishing business relations; ensuring the paid transfer of rights to lots of goods; implementation of economic and commercial activities; support (mediation) of economic and commercial activities; the provision of wholesale trade services; intra-economic legal relations (domestic wholesale economic contracts);
2. the forms of economic activities: the main (economic-commercial activities) and support (injunctive);
3. depending on the limits of wholesale and economic relations: internal and external wholesale contracts;
4. according to the degree of regulation: defined and non-defined wholesale contracts;
5. depending on the legal status and nature of contractual obligations: basic wholesale contracts, basic wholesale contracts, representative wholesale contracts, security wholesale contracts, auxiliary wholesale contracts, information contracts in wholesale legal relations.