

Legal Alert

May 2010

Speedread:

- In the course of creating a distribution system, the buyer's market share will also have to be examined.
- Among hardcore restrictions are some new restrictions on online sales.

Change in competition rules for distribution agreements

Effective 1 June 2010 the block exemption for vertical cartels will be replaced by a new Commission Regulation no. 330/2010. The block exemption is directly applicable to distribution agreements in the Czech Republic even if the agreements have no effect on trade between EU member states based on sec. 4 of Act no. 143/2001 Coll., on Protection of Competition ("Act").

Safe harbor

The main objective of the block exemption scheme is to create a safe harbor. Safe harbor means the presumption of legality of agreements concluded between undertakings operating at different levels of the market. The presumption applies if:

- the parties do not exceed 30 percent the relevant market share; and
- the agreement does not contain so-called hardcore restrictions that cause the distribution agreement to be void.

In practice, the most frequently occurring hardcore restrictions limit the buyer by setting a fixed or minimum resale price, or include a provision in which the supplier seeks to limit the buyer in the extent to which the good/service may be provided in certain territories or to certain customers. The main benefit of the block exemption is that companies choosing their distribution system may relatively easily assess whether this system is in compliance with law. If the company has more than a 30 percent relevant market share, it does not mean that it cannot restrict the buyer in reselling its goods in some way. Nevertheless any such agreement must be examined individually to see whether it contains clauses which restrict competition and if so, whether can be justified by using the criteria set out in Act.

30 percent share

The new regulation is based on the original concept and largely reproduces the well-established model. A significant change is the application of 30 percent of the relevant market share also to the buyer and tightening rules on the buyer's permitted restriction of internet sales.

According to the former regulation the presumption of legality applied only if the supplier does not exceed a 30 percent relevant market share. According to new regulation this also applies to the buyer. In the future, in the course of creating a distribution system, the buyers relevant market share will also have to be examined.



Continuation

Hardcore restrictions on online sales

Another important change extending the catalog of hardcore restrictions is the regulation of online sales. Clauses whereby the buyer agrees to take such steps that would lead to customers from other territories not being able to view his website or being automatically redirected to another distributor will also be considered a hardcore restriction. The obligation of the buyer to terminate the transaction at the time when they find out the customer's address by entering data for internet payments or the obligation to restrict the quantity of goods sold over the internet as well as the buyer's obligation to pay a higher price for goods to be distributed via the internet in comparison with goods sold the classic way will also be considered a hardcore restriction.

Force

The new regulation provides for a one year transitional period from when it comes into force. The regulation will not apply to agreements which were concluded before 1 June 2010 and are in conflict with the new regulation until 31 May 2011. Primarily this will be the case when a vertical agreement has been concluded with a buyer who has a market share bigger than 30%.

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