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COMPETITION. NEW REGULATIONS IN THE MOTOR VEHICLES FIELD

Previous circumstances – the independence of the regulations in the motor vehicles field

In general, all vertical agreements (which category also includes the distribution of motor vehicles, which is usually a selective qualitative distribution), were subject to the provisions of Commission Regulation (EC) no. 2790/1999 with respect to the applying of the provisions of art. 81 paragraph (3) of the Treaty to the categories of vertical agreements and concerted practices. The regulation provided for the exemption, under certain circumstances, of the vertical agreements and the concerted practices, from the applying of art. 81 of the Rome Treaty, which prohibits any agreements between enterprises, any decisions of the enterprise associations and any concerted practices which may infringe upon the trade between the member states and the object or effect of which is the prevention, restriction or distortion of competition within the joint market.

EC Regulation no. 2790/1999 does not apply to the vertical agreements which were included in the scope of a different regulation for exemption per categories.

Thus, the motor vehicles sector was not subject to this regulation, but represented the object of a separate regulation – Commission Regulation (CE) no. 1400/2002 on the applying of art. 81 paragraph (3) of the Treaty to the categories of vertical agreements and concerted practices in the motor vehicles sector, known as the Block Exemption Regulation (BER). BER included specific regulations for the motor vehicles' market, referring both to the sale and distribution of new motor vehicles and to the sale and distribution of spare parts, as well as to the performance of motor vehicle repair and maintenance services.

Current circumstances – the tendency towards the unification of general legislation with the legislation applicable to the auto sector

Both. 2790/1999 of the Commission and (EC) Regulation no. 1400/2002 (BER) of the Commission expired on May 31, 2010, however, instead of being replaced with other regulation, the European Commission decided that, as far as the distribution of new motor vehicles is concerned, there do not appear to be any significant differences in the competition field, which would distinguish this sector from other economic sectors and would require the applying of different and stricter norms. Thus, (EC) Regulation no. 2790/1999 was replaced by (EU) Regulation no. 330/2010 of the Commission, dated April 20, 2010 regarding the applying of art. 101 paragraph (3) of the Treaty on the functioning of the European Union to the categories of vertical agreements and concerted practices, and in the field of motor vehicles by (EU) Regulation no. 461/2010 of the Commission, dated May 27, 2010 regarding the applying of art. 101 paragraph (3) of the Treaty regarding the functioning of the European Union to the categories of vertical agreements and concerted practices in the field of motor vehicles, which solely covers the agreements for the distribution of spare parts and for the supply of repair and maintenance services.

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The European Commission's intention is for the general Regulation for vertical agreements (330/2010) to apply to the agreements for the distribution of the new motor vehicles, and for the field of distribution of spare parts and performance of repair and maintenance services to be subject, primarily, to the provisions of the special Regulation in this field (461/2010), which should, however, also be construed with the provisions of the general Regulation (330/2010).

Immediate applicability vs. transition period

As far as the distribution of new motor vehicles is concerned, the European Commission decided that up to May 31, 2013 the provisions of (EC) Regulation no. 1400/2002 shall continue to apply. The new general Regulation with respect to vertical agreements (330/2010) shall apply to the distribution of new motor vehicles beginning from June 1, 2013, as the European Commission considered that such transition period is welcome in order to offer business operators the possibility to adapt to the new regulation's requirements.

As regards the vertical agreements for the distribution of spare parts and for the supply of repair and maintenance services, (EU) Regulation no. 461/2010, construed with the provisions of (EU) Regulation no. 330/2010 have begun to apply as of June 1, 2010.

What novelty does the current regulation bring?

One of the most important amendments is the method of calculation of the market share, in accordance with which suppliers are exempted from being subject to the provisions of the Treaty. Thus, as far as the distribution of motor vehicles is concerned, in the previous rule of EC Regulation no. 1400/2002 (BER), the restrictions of the Treaty did not apply to the vertical agreements concluded by a supplier and a distributor, in the event that the market share held by the supplier did not exceed 30% of the relevant market on which the same sold new motor vehicles, spare parts for motor vehicle or repair and maintenance services. The requirement with respect to the market share was, of course, supplemented by the other restrictions imposed by the BER.

In the current rule of EU Regulation no. 330/2010, which shall apply with respect to the requirement of the market share both with respect to the distribution of new motor vehicles and with respect to the distribution of spare parts for motor vehicles and repair and maintenance services, the provisions of art. 101 paragraph (1) of the Treaty on the functioning of the European Union, which prohibits vertical agreements and is included in the category of vertical agreements that meet the requirements of the provisions of art. 101 paragraph (3) of the Treaty, shall not apply to such vertical agreements in which the market share held by the supplier does not exceed 30% of the relevant market on which the latter sells goods or contractual services, and the market share held by the buyer does not exceed 30% of the relevant market on which the latter buys goods or contractual services.

Also, with respect to the distribution of new motor vehicles, beginning from June 1, 2013, since the provisions of the general Regulation on vertical agreements (330/2010) apply, certain restrictions shall disappear, as follows:

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- the suppliers may impose to the distributors, by means of the agreements that they concluded, an obligation of non-competition over the limited period of a maximum of 5 years, by means of which the distributors would be obligated to buy from the supplier or from another enterprise designated by the same, over 80% of its total acquisitions of contractual goods. In the rule that shall also apply up to May 31, 2013 (Regulation 1400/2002), the non-competition obligation may be imposed for a limited period of a maximum of 5 years in the form of obligating the distributors to purchase from the supplier or from another enterprise designated by the same over 30% of its total acquisitions of contractual goods; and
- there shall no longer exist either the obligation to conclude the vertical agreement for the distribution of new motor vehicles for a period of at least 5 years or for an indefinite period, nor the prior notice periods in the event of unilateral termination (6 months or 2 years, respectively, in the case of the distribution contract concluded for an indefinite period).

However, the aforementioned provisions have applied to the distribution of spare parts and the performance of repair and maintenance services for motor vehicles since June 1, 2010. Therefore, strictly related to the field of repair and maintenance of motor vehicles and the same of spare parts by the distributors, the suppliers may begin to impose upon the distributors the non-competition obligation to acquire at least 80% of the spare parts from them, for a limited period of 5 years.

However, the possibility granted to suppliers to impose upon the distributors of their repair and maintenance network to acquire spare parts only from the supplier or from an enterprise designated by the same for the activities of repairs and maintenance of the motor vehicles that are still in their guarantee period, those that were recalled in service as a result of manufacturing problems and of those benefiting from free service, shall remain valid.

The supplier's prohibition to impose to a business operator to also act as seller and certified motor vehicle repair unit remains valid as well. Nevertheless, in the additional Guidelines regarding the vertical restrictions in the agreements for the sale and repair of motor vehicles, as well as for the distribution of spare parts for motor vehicles, the European Commission specifies that, in certain cases imposed by the nature of the contractual services or in the case of a supplier that launches a new brand on a certain geographical market and finds that it is difficult to attract distributors who are willing to make the necessary investments, the contractual correlation of the two activities for a limited period of time would be permitted and would have as an effect the stimulation of competition on the motor vehicle sale market.

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