

Statement of a Legal Counsel concerning the Block Exemption Regulation on vertical restraints

There are three subject matters which should be improved:

I. The restriction of cross-supplies between distributors within a selective distribution system (Art. 4 lit. d) **should be possible** in order to coordinate the regulation concerning selective distribution systems and the regulation concerning exclusive distribution (Art. 4 lit. b, Alt. 1).

It is a necessity for the enterprises to have the possibility to restrict cross supplies between low and high price countries in order to protect their distribution systems also in cases of selective distribution.

There have been many cases in the past, in which distributors in a low price country, to which goods had been sold at a lower price than in other countries, exported these goods to countries with a higher price level in order to gain more profit and thus caused a very difficult situation for the distributors in the high price countries, because these distributors could not sell their products at competitive prices any more, because they themselves had paid a higher purchase price to the manufacturer than the distributors in the low price countries.

In several cases the distributors in the high price countries almost went bankrupt.

The Block Exemption Regulation on vertical restraints has the aim to promote competition, but the prohibition of the restriction of cross-supplies between distributors within a selective distribution system has an effect to the contrary, because it can cause - in the worst case - a lot of distributors in high price countries to go bankrupt, if there is no possibility to restrict cross-supplies from low price countries.

Furthermore, it can also cause manufacturers themselves to go bankrupt, because they need to have the possibility to gain higher prizes in at least some countries in order to make up for the lower profits in other countries - this "price-mix" must be possible and it already is possible in cases of exclusive distribution (Art. 4 lit. b, Alt. 1).

It has to be possible also in cases of a selective distribution system.

Furthermore, the regulation in Art. 4 lit. d is not clear, because according its wording it also comprises cases of "quantitative" selective distribution, which, however, actually also are comprised by the cases of exclusive distribution mentioned in Art. 4 lit. b, Alt. 1.

There is no reasonable reason which can justify the difference which currently is made between cases of exclusive distribution and cases of selective distribution and therefore, **give the enterprises the possibility to protect their distribution system also in cases of selective distribution !**

II. Currently, an after-contractual prohibition of competition only is possible for one year (Art. 5 lit. b) - in many cases this time is too short in order to give an enterprise the possibility to strengthen the relationship with its customers, especially concerning products with a long lifetime, which are bought in fewer intervals than other products.

Therefore, an after-contractual prohibition of competition should be possible for at least two years.

III. In many cases it is very difficult to determine the market share; therefore, there should be stated a range from 30 to 40 %.

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