



New Legislation on Protecting Competition

Block Exemptions Concerning Vertical Agreements

**Useful assessments:
Market shares,
Exclusive provisions,
Minimal prices or
Non-compete clauses**

The new Law on Protecting of Competition came into force on November 1, 2009. On the basis of the mentioned Law the Serbian Commission for Protecting of Competition (CPC) is now empowered to conduct sight inspections and penalize any competition restraints of appreciable extent. Potential fines may amount up to 10% of the undertaking's annual operating revenue, including revenues of its connected legal entities! On the other hand, undertakings will have

more certainties that their agreements are valid and compatible with the law. The Government of Serbia has passed, or it is about to adopt, implementing rules which govern the process of defining relevant markets and block exemptions that are granted to some categories of agreements. Under the later opportunity, undertakings are relaxed from the obligation to ask for exemption from the CPC if their agreements are on the "white list" of competition restraints.

What should be checked in advance?

Are there any vertical agreements?

Vertical agreements are agreements or concerted practices entered into between two or more undertakings each of which operates at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods and services.

In which cases the exemption shall not apply?

Vertical agreements should not have as their objects:

- The restriction of the territory into

Vertical agreements:

Single branding
Exclusive distribution
Selective distribution
Franchising
Exclusive supply
Upfront access
payments
Category management
agreements
Tying
Resale price
maintenance

which, or of the customers to whom, a buyer

party to the agreement may

sell the contract goods or services

• The restriction of active or passive

sales to end-users by members of a

selective distribution system operating

at the retail level of sale

• The restriction of cross-supplies between

distributors in a selective distribution

system

• The restriction of a supplier's ability to sell the

components as spare parts to end-users not entrusted

by the buyer with the repair of such

goods.

Are there any restraints concerning resale prices?

Restraints concerning resale prices are called resale price maintenance (RPM). It may take various forms and has as its direct or indirect object constraints of the buyer's ability to determine its resale prices.

If your share in the relevant market is below 25%, competition restraints, if any, should not concern you...

Examine the way how prices are determined.

Are prices imposed as maximum resale prices or simply recommended as resale prices? Are there any sanctions for breaching provisions concerning resale prices? Imposing fixed or minimum prices by means of pressure or incentives is not allowed.

What kind of documents are at stake?

Of course, written selling or buying agreements are the main concern. However, concerted practices count as well. Annexes to the agreements, relating e-mails or other written

correspondence, invoices, letters explaining discount policies, debit letters, etc. provide additional decisive information. Be aware of that.

What is purpose of defining the relevant market?

CCP sees the purpose of defining the relevant market as to identify which goods and services are such close substitutes for one another that they operate as competitive constraints on the behaviour of the all suppliers. Goods and services may domestically originate or be imported from abroad. If you are an exclusive distributor of imported goods, you may operate at different relevant markets even if you have a single distribution agreement. The market share must be determined for each separate relevant market.

What happens if your share in the relevant market is above the threshold of 30%?

The first reaction should be to verify whether the agreement contains provisions eligible for block exemptions. If you are positive about that, you should do nothing more.

If you are in a doubt or it may happen that the provisions do not satisfy the required conditions for block exemption, the only way out is to ask CPC for a temporary waiver. The formal request has to be filled in a special format demonstrating that additional conditions are fulfilled.

Is it a non-competing clause a valid one?

A non-competing clause refers to any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell the contract goods and services or causing the members of a selective distribution system not to sell the brands of particular competing suppliers.

Under certain conditions those obligations may be legally binding.

What can we do for you?

We can assist you to adopt a doable solution based on rigorous economic analyses and accurate legal assessments

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