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Bulgaria: First-instance court confirms a fine of over € 8 mln on the distributor of Hyundai in Bulgaria for several hard-core vertical restrictions

Zoya Todorova (Dimitrov, Petrov & Co.) · Tuesday, January 17th, 2017

At the very end of 2016, the Bulgarian Supreme Administrative Court in its first-instance 3-member panel, confirmed one of the highest fines ever imposed by the Bulgarian Commission for Protection of Competition (CPC) back in 2012. The decision was issued following an investigation of the distribution network for Hyundai motor vehicles in Bulgaria which resulted in findings of several hard-core restrictions in the vertical agreements concluded between the Bulgarian distributor of Hyundai and its dealers within a selective distribution system.

A total of six undertakings were sanctioned, all of them by the maximum fine of 10 % of their respective total turnover. For the distributor ? Industrial Commerce Ltd. (Industrial Commerce), the fine amounts to more than € 8 mln.

The case was initiated *ex officio* by the CPC in 2011 and ran for more than a year, involving also a dawn raid in the offices of Industrial Commerce. Three affected markets were defined:

- Wholesale and retail of new motor vehicles, as well as servicing in the warranty period;
- Provision of servicing out of warranty period;
- Sale of spare parts for motor vehicles.

The investigation of the Commission discovered a number of violations within the agreements concluded between Industrial Commerce and its dealers, covering a good part of the spectrum of hard-core vertical restrictions in the antitrust theory. These include:

- **Resale price maintenance:** fixing selling prices for new Hyundai motor vehicles, for spare parts and accessories, as well as for providing services out of warranty period;
- **Interbrand competition restriction:** non-compete obligation of the dealers in the selective distribution system by prohibiting sales of competing brands as regards new motor vehicles, as well as spare parts of equivalent quality when servicing Hyundai motor vehicles out of warranty period;
- **Intrabrand competition restriction:** prohibition of cross sales within a selective distribution system of new motor vehicles and original spare parts;
- **Prohibition of active sales** of new Hyundai motor vehicles outside the territory determined for the respective dealer.

In view of the above, in its decision the CPC found that each of the above vertical agreements constitutes restriction of competition *by object* and found them incompatible with both national competition law provisions and Art. 101 (a) TFEU as capable to affect trade between Member States. None of the agreements falls within the scope of the block exemptions as all of them are defined as hard-core restrictions. The violations had been running for more than 6 years. The sanctions were defined considering a number of factors, including the duration of the violation, its effect on the relevant markets, its community dimension and other aggravating circumstances. For all undertakings, the sanctions were far exceeding the maximum provided by law, which led to their reduction to the allowed 10% of the total turnover for the year preceding the decision of the CPC.

All findings of the CPC, including the amounts of the fines, were upheld by the first-instance court. Its decision is now subject to a second-instance appeal before a 5-memberpanel of the Supreme Administrative Court.

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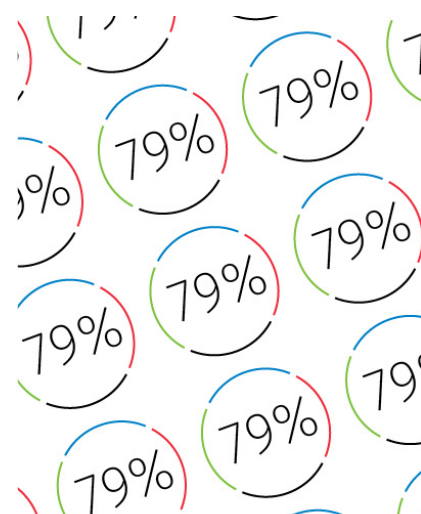
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