Distribution Law Center
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The Bulgarian edition "Vertical Agreements. EU-Bulgaria" is quoted by the Bulgarian Supreme Administrative Court (SAC)

Decision of CPC

In 2012 CPC imposed a BGN 16-million sanction on the Bulgarian Hyundai importer for infringement of Article 101(1) of the Treaty on the Function of the European Union (TFEU) and the corresponding national legislation. This is the highest sanction ever imposed on a private entity in Bulgaria.

The sanction was imposed for hardcore restrictions contained in the agency agreements between the Bulgarian Hyundai importer and its dealers. According to CPC the agency agreements transferred enough risks on the dealers to enable the application of Article 101(1) TFEU and the corresponding national legislation.

On appeal the decision of CPC was upheld by the first instance of SAC.

Final judgment of SAC

In June 2021 the last instance of SAC repealed the first instance judgment and returned the file to CPC for a new review in compliance with instructions given by SAC. In the proceedings SAC also asked the Commission for an opinion under Article 15 of Regulation 1/2003 in relation to the notion of "effect on trade".

SAC held that CPC was wrong to conclude that trade between member states was affected and therefore Article 101(1) TFEU did not apply. In this relation, SAC noted that no economic analysis or collection and consideration of relevant evidence were performed by CPC. The national market share of the Bulgarian Hyundai importer and its dealers on the new-motor-vehicle market was approximately 3% and on a Community level – below 1%. Although no reliable data existed regarding the market shares on the spare-parts and post-warranty servicing markets, an expert opinion on the case implied that those were comparable or even lower.

SAC also noted that it was disputable whether the dealers assumed any risks to enable the application of Article 101(1) TFEU.

Reference to the Bulgarian edition "Vertical Agreements. EU–Bulgaria"

In its final judgment SAC made an express reference to the Bulgarian edition "Vertical Agreements. EU–Bulgaria":

"*Whereas "Industrial Commerce" EOOD acts at the same time both as a wholesaler and a retailer, as well as considering the scope of the agreements under review – distributor-dealer relations in a part /possibly the whole/*

of the territory of Bulgaria, there applies the determination of the relevant market contained in pages 503-504 and page 509 of "Vertical Agreements. EU - Bulgaria", Frank Wijckmans, Filip Tuytschaever, I. Marinov, "Sibi", 2018 …".