CASE CARD | 14 September 2026

VSL Sodba (I Cpg 117/2020)

Exclusive distribution

1. CASE SUMMARY

A. Summary of facts

The Distributor and the Manufacturer concluded a distribution agreement under which the Distributor had the exclusive right to sell certain products to restaurants in the Republic of Slovenia (the 'Exclusivity Clause'). The parties agreed on a contractual penalty of 10,000 EUR for each breach of the agreement. The Distributor alleged that the Manufacturer had breached the Exclusivity Clause by selling the products directly to restaurants and claimed payment of 450,000 EUR for those breaches.

B. Notes on case history

The first instance court awarded the Distributor a contractual penalty of only 10,000 EUR. It held that all direct sales made by the Manufacturer constituted a single breach of the agreement. The first instance court also found that the contractual penalty was not disproportionate.

C. Legal analysis

C.1. - Permissibility of the Exclusivity Clause

The Ljubljana Higher Court explained that only restrictive agreements, whose object is the prevention, restriction, or distortion of competition within the territory of the Republic of Slovenia are prohibited and consequently null and void under Article 6 of the Prevention of Restriction of Competition Act (*Zakon o prepre?evanju omejevanja konkurence*, the 'Slovenian Competition Act').

Distribution agreements containing exclusivity clauses will generally qualify for the exception applicable to agreements producing beneficial effects under Article 6(3) of the Slovenian Competition Act, which is the national equivalent of Article 101(3) TFEU. This is particularly the case where an agreement does not provide for absolute territorial protection, but only for relative territorial protection. In the present case, the Exclusivity Clause applied only to sales to restaurants and not to sales to shops.

C.2. - 'Consensual' termination of the Exclusivity Clause

A few months after the conclusion of the agreement containing the Exclusivity Clause, the Manufacturer sent the

Distributor an e-mail asking it to "*specify its agreement to the Manufacturer's direct sales to restaurants in an annex to the distribution agreement*". The Distributor did not respond.

The Ljubljana Higher Court concluded that the Distributor's failure to respond constituted implied consent to the termination of the Exclusivity Clause. In particular, the court found that the e-mail constituted an offer to the Distributor. As the parties had an ongoing business relationship involving regular contacts concerning the relevant products, the Distributor was required to reject that offer. In the absence of such a rejection, the offer was deemed to have been accepted and the annex terminating the Exclusivity Clause was deemed to have been concluded under Article 33 of the Obligations Code (*Obligacijski zakonik*, the 'Obligations Code').

C.3. - Meaning of a 'breach' for the purposes of the contractual penalty

The Ljubljana Higher Court found that the Distributor was entitled to the agreed contractual penalty for each individual delivery of products covered by the agreement, irrespective of the volume of each delivery. It held that the first instance court's interpretation was contrary to the purpose of the contractual penalty.

C.4. - Proportionality of the contractual penalty

The Ljubljana Higher Court found that a contractual penalty of 10,000 EUR for each direct delivery of the products was not disproportionate, irrespective of the value of the individual delivery.

The relevant consideration when assessing the proportionality of the contractual penalty was not the actual damage caused by the breach, but the presumed damage that the beneficiary would probably have suffered as a result of the breach. After comparing the companies' expected and realised revenues, the Ljubljana Higher Court concluded that the contractual penalty was not disproportionate.

2. QUOTES

"*By granting relative territorial protection to the Distributor, the Manufacturer, of its own free will, gave up the sale of its products to restaurants in exchange for the reasonably foreseeable positive effects of sales through a single distributor and therefore did not impose unnecessary restrictions on itself that would restrict competition.*" (free translation)

"*Under the cited provision, Article 30 of the Obligations Code, the Distributor's legal representatives should have responded immediately to the Manufacturer's communication, namely the email, by denying their "consent" to amend the agreement. However, they did not do so.*" (free translation)

"*The interpretation of the first instance court is contrary to the purpose of the contractual penalty, as it does not incentivise the Manufacturer to comply with its contractual obligation but, on the contrary, incentivises it to commit*

as many breaches as possible, without offering the Distributor adequate protection against such breaches." (free translation)

"*The relevant consideration when assessing the proportionality of the penalty is not the actual damage caused by the breach, but the presumed damage that the beneficiary would probably have suffered as a result of the breach.*" (free translation)

3. RELEVANT LEGISLATION

- Slovenian Prevention of Restriction of Competition Act (*Zakon o prepre?evanju omejevanja konkurence*, Official Journal of the Republic of Slovenia, No. 36/08, as amended)
- Slovenian Obligations Code (*Obligacijski zakonik,* Official Journal of the Republic of Slovenia, No. 97/07, as amended)

4. PRACTICAL SIGNIFICANCE

This judgment shows that, in the context of an ongoing business relationship, a party's failure to respond to an email proposing an annex to an existing agreement may constitute tacit acceptance of that annex. It also confirms that each delivery made in breach of an exclusivity clause may constitute a separate contractual breach, entitling the other party to a separate contractual penalty.