

AGREEMENTS RESTRICTING FREEDOM OF COMPETITION AND THEIR REGULATION

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Abstract

The article deals with problems of agreements restricting freedom of competition and their regulation in the European Union, Italy as a member state of the European Union and also in the Czech Republic. Attention is paid especially to the lists of prohibited agreements and also to exemptions from the prohibition of agreements.

1. Introduction

At the present time more than 120 countries world-wide have antitrust legislation. Rules protecting competition exist in all the industrialized countries belonging to the Organization for Economic Cooperation and Development (OECD).

Legislation to protect competition was adopted not only in numerous developing countries, but also in the countries with transition economy in Central and Eastern Europe.

Law protecting competition varies between countries, particularly in terms of the institutional arrangements and procedures. Within the European Union, legislation being increasingly standardized, and many states have lately amended their national legislation protecting competition in order to harmonize it with Community law. [2]

2. Agreements Restricting Freedom of Competition

Firms sometimes conclude agreements and coordinate their behavior. Cooperation between firms may have as its object or effect the restriction of competition.

This occurs, for example, when several firms jointly fix prices, reduce outputs or divide the market between them by setting up cartels to preclude competition. Agreements of this kind interfere with competition, and reduce incentives to operate efficiently and to offer products at prices and with features that are best able to satisfy consumer requirements.

Competition may also be restricted by agreements between subjects operating in successive phases in the production process (for example exclusive agreements between the manufacturer and the distributor of a product, or between the supplier of raw materials and a manufacturer), especially when these are likely to put up market entry barriers against new competition. [2]

2.1 Community Legislation

Article 81 of the EC Treaty prohibits agreements distorting competition. This Article establishes [3, par. 1]: The following shall be prohibited as incompatible with the Common Market; all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their

object or effect the prevention restriction or distortion of competition within the Common Market, and in particular those which:

- a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- b) limit or control production, markets, technical development, or investment;
- c) share markets or sources of supply;
- d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- e) make the conclusions which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Any agreements or decisions prohibited pursuant to this Article shall be automatically void. [3, par. 2]

The provisions may, however, be declared inapplicable in the case of [3, par. 3]:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

2.2 Italian Legislation

Regulation of agreements that impede competition are established by Law no. 287 of 1990 - The Competition and Fair Trading Act in Italy.

Agreements restricting freedom of competition are arranged in Section 2 of this Act [4]. The following shall be regarded as agreements: accords and/or concerted practices between undertakings, and any decisions, even if adopted pursuant to their Articles or Bylaws, taken by consortia, associations of undertakings and other similar entities.

Agreements are prohibited between undertakings which have as their object or effect appreciable prevention, restriction or distortion of competition within the national market or within a substantial part of it, including those that:

- a) directly or indirectly fix purchase or selling prices or other contractual conditions;
- b) limit or restrict production, market outlets or market access, investment, technical development or technological progress;
- c) share markets or sources of supply;
- d) apply to other trading partners objectively dissimilar conditions for equivalent transactions, thereby placing them at an unjustifiable competitive disadvantage;

- e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Prohibited agreements are null and void.

Exemption from the prohibition of agreements restricting competition are arranged in Section 4 of this Act [4]. The Antitrust Authority may authorize, for a limited period, agreements or categories of agreements prohibited under Section 2 which have the effect of improving the conditions of supply in the market, leading to substantial benefits for consumers. Such improvements shall be identified taking also into account the need to guarantee the undertakings the necessary level of international competitiveness and shall be related, in particular, with increase of production, improvements in the quality of production or distribution, or with technical and technological progress. The exemption may not permit restrictions that are not strictly necessary for the purposes of this subsection, and may not permit competition to be eliminated in a substantial part of the market.

2.3 Czech Legislation

The protection of competition on the market of products and services against its elimination, restriction, other distortion, or, against its threat by agreements between undertakings regulates the Act No. 143/2001, on the Protection of Competition in the Czech Republic.

All agreements between undertakings, decisions by associations of undertakings and concerted practices which result or may result in the distortion of competition shall be prohibited and invalid, unless the Act No. 143 or special Act provides otherwise, or unless the Office for the Protection of Competition grants an exemption from this prohibition. [1, Art. 3, par. 1]

A non-exhaustive list of prohibited practices, similar to those contained in Article 81 of the EC Treaty, is mentioned in the Act. Prohibited shall be in particular agreements which result or may result in the distortion of competition as far as they include provisions on [1, Art. 3, par. 2]:

- a) direct or indirect fixing of prices or other business terms and conditions;
- b) limitation or control of production, sales, research and development or investments;
- c) division of markets or sources of supply;
- d) making the conclusion of a contract subject to acceptance of further performance, which by its nature or according to commercial usage and fair business practices have no connection with the subject of such contracts;
- e) application of dissimilar conditions to identical or equivalent transactions with other undertakings, thereby placing them at competitive disadvantage;
- f) obligation of the parties to the agreement to refrain from trading or other economic co-operation with undertakings not being party to the agreement, or to otherwise harm the same (group boycott).

If only a part of the agreement is prohibited hereunder, the prohibition shall apply solely to that particular part. Provided that it may be inferred from the nature, contents or

purpose of the agreement, or the circumstances in which the agreement was concluded, that such part may not be severed from therefrom, whole such agreement shall be prohibited and invalid. [1, Art. 3, par. 3]

Undertakings may apply to the Office for an individual exemption from the prohibition of agreements provided that the agreement in question shall [1, Art. 8, par. 1]:

- a) contribute to improving the production or distribution of goods or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefits;
- b) not impose restrictions on undertakings which are not indispensable for the attainment of the objectives listed in point above, and
- c) not enable undertakings to eliminate competition on substantial part of the market for goods of which the distribution or purchase is the objective of the agreement.

3. Conclusions

Ground and procedural differences still remain among national laws and procedures for enforcing competition rules. In order more effectively to cause competition law in all the European countries the national competition authorities recently founded the European Competition Authorities. The task of the European Competition Authorities is to encourage forms of cooperation and coordination among the national authorities to strengthen horizontal coordination once the process of modernizing Community competition legislation becomes effective. [2]

References:

- [1] Act No. 143/2001, on the Protection of Competition.
- [2] *Antitrust at your Fingertips* - The Structure and Role of the Italian Competition Authority. Rome, Istituto Poligrafico e Zecca dello Stato, 2002.
- [3] Article 81 of EC Treaty.
- [4] Law no. 287 of 10 October 1990 - The Competition and Fair Trading Act. In: *Official Gazette* (Rome), 1999, no. 240.

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