

HELLENIC COMPETITION COMMISSION

Athens, 16 March 2020

PRESS RELEASE

Subject: Application of competition rules to supply contracts and distribution agreements (vertical agreements).

Following on from the 7th of March 2020 Press Release of the Hellenic Competition Commission (HCC) on the application of competition rules in these present extraordinary social and economic conditions, because of the pandemic COVID-19, the HCC would like to point out the following in relation to vertical practices which may be observed in the context of the above conditions:

Pursuant to Article 1 (1) of Law 3959/2011 and Article 101 (1) TFEU as well as Regulation (EU) No 330/2010 "Block Exemption Regulation" (hereinafter referred to as the "BER"), some agreements and concerted practices which restrict and distort competition between undertakings operating at different levels of the production or distribution chain ('vertical agreements') are prohibited.

In particular, the BER exempts vertical agreements relating to the sale of all type of goods and services, **provided that the supplier's market share in the relevant market**, i.e. the market of goods or services in which he sells the goods or services, **does not exceed 30%, and the market share of the buyer in the relevant market**, i.e. the market in which he purchases the goods or services, **does not exceed 30%**.

It should be stressed that the BER **does not apply**, irrespective of the market share held by an undertaking, where the agreement contains hardcore vertical restrictions, such as **resale price maintenance**, that is the **establishment of a fixed or minimum resale price** or a **fixed or minimum price level** to be observed by the buyer.

However, the BER **permits –subject to conditions- the imposition of maximum resale prices or recommended resale prices** where this does not amount to a minimum or fixed selling price due, for instance, to pressure exerted or incentives offered by one of the parties.

Some indicative examples in relation to the present social and economic conditions would be the following:

- The manufacturer of personal hygiene products may set the maximum resale prices of his products by his buyers / customers retailers.
- In a food distribution network, the producer may set recommended resale prices for these products.
- If a new product is introduced, even the setting of a resale price may be justified for short periods (e.g. in relation to promotions / campaigns from 2 to 6 weeks).
- An internet platform / marketplace can set a price cap on the products which are made available through it.

In addition to the above, it is possible that the imposition of **maximum resale prices or recommended resale prices does not contravene EU and national competition law when they apply to vertical agreements** (i.e. agreements between different stages of the supply and distribution chain) concerning the sale of goods and services of all kinds, **even where the suppliers or the buyers have market shares of more than 30%**, provided that the suppliers or buyers can justify these restrictions in accordance with paragraphs 227-229 of the EU

Commission's Vertical Restriction Guidelines (see further: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:130:0001:0046:EL:PDF>).

It is worth noting that such practices may, under certain circumstances, constitute an abuse of a dominant position in the event that the suppliers or the buyers have a dominant position. In this case, the HCC may intervene by applying Article 2 of Law 3959/2011 and/or Article 102 TFEU.

In view of the above, the HCC, being the sole competent Authority responsible for the maintenance and restoration of free competition in the Hellenic Republic, **will not take action** against practices which relate to the imposition of **maximum resale prices** or **recommended prices** on supply contracts and distribution agreements, provided that the conditions set out above are fulfilled.

However, the HCC will continue to examine hardcore vertical restraints which are brought to its attention, such as resale price maintenance (establishing a fixed or minimum resale price or level), and will impose on undertakings that apply such practices, if found anticompetitive, the penalties laid down by the law.