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National vertical block exemption in Bulgaria:

- The provision of Article 101 of TFEU in Bulgaria is reproduced in several different articles of the Protection of Competition of Act (PCA), eg;
 - Article 15 of PCA provides for a general prohibition and the voidness as a consequence;
 - Article 17 of PCA provides for the possibility of (individual) exemption, explicitly stipulating that proving the circumstances for this is the obligation of the undertaking that benefits from them.
- In addition to the above, Article 18 of PCA provides for the possibility of block exemption, and Article 16 of PCA provides for the national de minimis rule.
- Pursuant to Article 18 of PCA, certain categories of agreements, decisions and concerted practices that meet the requirements of Article 17 of PCA may be block exempted from the prohibition under Article 15 by a decision of the Bulgarian Commission on Protection of Competition (CPC), which is not subject to appeal. Provided that CPC's decision on block exemption is published in the State Gazette, it should meet the requirements for a by-law under Bulgarian law.
- As at today CPC has adopted Decision 24/11.01.2024 on block exemption from the prohibition under Article 15(1) of PCA of certain categories of agreements, decisions and concerted practices, published in the State Gazette, issue 9 of 30.01.2024. The motives to Decision 24/11.01.2024 explicitly confirm that the requirements for exemption from the prohibition under Article 101(1), provided in Article 101(3) of TFEU, are completely identical to the requirements for exemption from the prohibition under Article 15(1), provided in Article 17(1) of PCA. The legal technique adopted in Decision 24/11.01.2024 is to make a general reference to the relevant block exemption regulations at EU level, and where necessary, certain criteria from these regulations are adjusted in Decision 24/11.01.2024 to the specificities of the national market:
 - Article 4 concerns vertical agreements in general;
 - Article 5 concerns agreements relating to the aftermarket motor vehicle services ;

- Article 6 concerns specialisation agreements;
- Article 7 concerns research and development agreements;
- Article 8 concerns technology transfer agreements.
- Article 4(1)-(4) of Decision 24/11.01.2024 provides for the following:
 - Article 4(1): agreements that fall within the scope of the concept of “vertical agreements” within the meaning of Article 1(1)(a) of Regulation 2022/720 and do not affect trade between EU Member States within the meaning of Article 3(1) of Regulation 1/2003 shall be deemed to be exempted from the prohibition under Article 15(1) of PCA where they meet the conditions under Article 2(1), (3)-(7), as well as Article 3, in conjunction with Article 8 of Regulation 2022/720;
 - Article 4(2): vertical agreements concluded between an association of undertakings and an individual member or between such an association and an individual supplier within the meaning of Article 2(1) of Regulation 2022/720 shall be deemed to be exempted from the prohibition under Article 15(1) of PCA only if all its members are retailers of goods and if no individual member of the association, together with its affiliated undertakings, has an annual turnover exceeding EUR 3.58 million, determined in accordance with Article 9 of Regulation 2022/720;
 - Article 4(3): the exemption from the prohibition under Article 15(1) of PCA does not apply to agreements containing restrictions that eliminate the benefits of the block exemption (hardcore restrictions), as referred to in Article 4 of Regulation 2022/720;
 - Article 4(4): the exemption from the prohibition under Article 15(1) of PCA does not apply to obligations contained in vertical agreements as referred to in Article 5 of Regulation 2022/720.
- Article 5(1)-(2) of Decision 24/11.01.2024 provides the following:
 - Article 5(1): agreements relating to the conditions under which the parties may purchase, sell or resell spare parts for motor vehicles or to provide repair and maintenance services for motor vehicles, which fall within the concept of “vertical agreements” within the meaning of Article 1(1)(a) of Regulation 461/2010 and do not affect trade between EU Member States within the meaning of Article 3(1)

of Regulation 1/2003, shall be deemed to be exempted from the prohibition under Article 15(1) of PCA, where they meet the conditions under Article 4 of Regulation 461/2010;

- Article 5(2): the exemption from the prohibition under Article 15(1) of PCA does not apply to agreements containing restrictions that eliminate the benefits of the block exemption (hardcore restrictions), as referred to in Article 5 of Regulation 461/2010.

- According to Article 16 (1) of PCA, the prohibition under Article 15(1) of PCA does not apply to agreements, decisions and concerted practices with an insignificant effect on competition (the de minimis rule). According to Article 16(3) of PCA, the de minimis rule “does not apply to agreements which have as their object or effect¹ ...” as opposed to the De minimis Notice which provides that it “does not cover agreements which have as their object² ...” only. CPC further adopted a decision, as its own analogue of the De Minimis Notice, which reflects the position that the deminis rule “does not cover agreements which have as their object³ ...” only. However, the CPC decision has not been published in the State Gazette and also may not contradict PCA. There is no case law to clarify this discrepancy, ie whether PCA is to be construed correctively to reflect the De Minimis Notice or there is a national specific de minimis rule.

In addition, the CPC de minimis decision was adopted to reflect Regulation 330/2010 and has not been adjusted to Regulation 720/2022.

¹ emphasis added

² emphasis added

³ emphasis added



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