

COMPETITION LAW

INDIVIDUAL RESTRICTIVE TRADE PRACTICES

DECREE-LAW 166/2013

Was published on the past September 27, overhauling and reforming the rules on restrictive trade practices. This statute has entered into force on February 25, 2014 and forbids the following:

- (i) discriminatory pricing or discriminatory conditions of sale;
- (ii) sales at a loss;
- (iii) refusal to sell goods or services; and
- (iv) unfair business practices

The present statute is applicable to businesses established in the Portuguese territory. Nonetheless, it does not apply to services of general economic interest, to the sale and purchase of goods and services of regulated industries, namely, the financial, postal, transport, electronic communication and electric power industries.

Also excluded are the sale and purchase of goods and services to or from non-EU or non-EEA countries.

(i) DISCRIMINATORY PRICES OR CONDITIONS OF SALE

Businesses may not apply discriminatory prices or conditions of sale to another one for equivalent goods and services. As a result, manufactures, producers, importers, distributors, packers and wholesalers of goods must provide, upon request, their price lists and conditions of sale to any reseller or user.

(ii) SALES AT A LOSS

Entities may not sell or offer goods to other entities or consumers at a lower price than the actual purchase price plus any applicable taxes to the sale and, being such case, transportation costs.

Consequently, to determine the sale price of a specific product, businesses must take into account any granted discounts, even if the latter consist of set-off against subsequent purchases of equivalent or other goods.

Nonetheless, such regime does not apply to the whole of goods, persisting as an exception the following:

- a) Perishable goods, from the moment they become liable to rapidly deteriorate;
- b) Goods whose trade value is impaired due to lack of need, to reduction of utility or due to a significant technical innovation;

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(CONTINUATION)

c) Goods restocked with other goods of like features at a lower price; or

d) Goods that are sold through sales or clearances.

(iii) REFUSAL TO SELL GOODS OR SERVICES

Businesses may not refuse to sell goods or services to one another, even if considered non-essential goods and from the refusal has no detrimental effect on normal market supply, except where the refusal is deemed justified. Also making the sale of goods or services contingent on the purchase of another good or service is considered as equivalent to a refusal to sell. Causes which support a refusal justification are listed in the statute.

(iv) UNFAIR TRADE PRACTICES

This Decree-Law specifically forbids practices between businesses, namely, the following:

1. Imposing a condition that forbids onward sale to other business at a lower price;
2. Applying prices, payment conditions, terms of sale, or conditions for trade cooperation that is not proportionate to the general terms and conditions of sale;
3. Unilaterally imposing, direct or indirectly, certain conditions pursuant to the statute;
4. Obtaining reciprocal concessions due to ongoing or occurred promotions;
5. Retroactive amendments to supply contracts.

OVERSIGHT AND DECISION OF CASE FILES

The Economic Crime Authority (ASAE) is responsible for supervising compliance, as well as preparing and adjudicating case files on administrative offences.

APPLICABLE SANCTIONS

Considering the previous legal regime, fines are currently higher. ASAE has also the authority to stop any conduct, even before a decision is issued in administrative offence proceedings, as a matter of urgency and without a prior hearing, whenever there is compelling evidence that it constitutes a restrictive trade practice, liable to cause other businesses serious harm that is either irreparable or else difficult to remedy. ASAE may also assess fines of between 2.000 and 50.000 euros per day, up to a maximum of 30 days or 1 500 000 euros.

EXISTING SUPPLY CONTRACTS

All existing supply contracts must be terminated within no more than 12 months, unless revised according with this new legal regime.

SELF-REGULATION

This statute encourages adopting self-regulation instruments to regulate business relations between representative structures of all or some of the economic activity sectors.

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