

## New Decree-Law

### Restrictive Competition Individual Practices

The Portuguese Government approved the new law applicable to restrictive competition individual practices.

The Decree-Law number 166/2013, of 26 of December will enter into force on February 25, 2014.

#### It applies to

Only Portuguese companies with head office in Portugal are subject to the new regime.

The following services are expressly excluded from its scope:

- The services of general economic interest;
- The purchase and sale of goods and the provision of services, that are subject to sectorial regulation, mainly in the financial sector, postal, transport, electronic communications and energy;
- The purchase and sale of goods and services to or from a country outside the European Union or the European Economic Area.

#### Discriminatory conditions of sale

The application of discriminatory prices or sales conditions that comply with competition law is not subject to the new law.

The new Decree-Law ceases the obligation of the producers, manufacturers, importers, distributors, packers and wholesalers of goods and providers of services have price lists. However, it remains the obligation of providing the price list if requested by any dealer or user.

#### Sale below cost

The prohibition to offer for sale or sell to a company or to a consumer any good at a price lower than its effective purchase price, plus any tax applicable or costs with the transport, remains applicable.

The meaning of "*effective purchase price*" is now clarified - it is the unit price of the purchase that appears in the invoice, net of payments or discounts related directly and exclusively with the transaction of the products, identified in their own invoice or by remission of this, in supply contracts or price lists that are in force at the time of the transaction.

It is now forbidden to sale goods whose price is in line with the price applicable to the same goods by another economic agent in the same activity, which is temporally and geographically a competitor.

#### Discounts

In order to assess if a sale was made below cost, the Portuguese authorities analyze the type of discount of a specific product granted to the economic agent or to the consumer.

When the discount consist in the assignment of a right of compensation in further purchases of equivalent goods or of another nature, the discount is allocated to the quantity sold of the same product and to the same supplier for the past 30 days.

#### Refusal to sell goods or render services

New causes of refusal:

- The existence of exclusive distribution agreements for a particular territory, in accordance with the Competition Law;
- Protection of intellectual property;
- Restrictions foreseen in the European Union Law and International Law, in particular for the repression of crime and terrorism;
- The abnormal difficulty of selling or rendering services for reasons of force majeure.

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### Abusive Business Practices

In the previous law it was forbidden to obtain exorbitant prices, payment conditions, sale methods or conditions of commercial cooperation from a supplier, in comparison to his general sales conditions.

Now, the new law expressly identify the following abusive business practices between companies:

- Prohibition of selling to any other company at a lower price;
- Obtaining prices, conditions of payment, terms of sale or conditions of commercial cooperation that are exorbitant in relation to its general conditions of sale;
- Unilateral imposition, direct or indirectly of:
  - a promotion of a particular product;
  - any payments in exchange of the promotion.
- Implementation of compensatory measures for promotions in progress or that has already occurred, including the discounts that consists in the assignment of a right for a compensation in further purchase of goods equivalent or of another nature;
- Retroactive amendment of a supply agreement.

The new law also foreseen abusive business practices applicable specifically to the agri-food sector.

### Fines

In order to discourage the non-compliment with the new law, the amounts of the fines are increased.

The minimum value of the fine applicable is now 250.00 Euros and the maximum 2,500,000.00 Euros, depending on the type of infringement, and if practiced by a singular person, micro, small, medium or large company.

It is also foreseen the application of precautionary measures to suspend the execution of restrictive individual competition practices and penalty payments between 2,000.00 Euros and 50,000 .00 Euros/day.

### Supply Agreements

The Decree-Law provides that all supply agreements in force on the date of entry into force of the diploma (February 25, 2014), shall cease within a maximum of 12 months, except if, within that period, they are reviewed and made compatible with the new legal law.



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