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DISTRIBUTOR CONTRACT AS A SPECIFIC INSTRUMENT OF REGULATION ON THE WHOLESALE MARKET

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SUMMARY

The article is devoted to the study of the legal nature of distribution contracts, their regulatory regulation, the subject composition and the essential conditions of this category of contracts. The author also considered distribution as a specific tool for regulating relations in the wholesale market.

Key words: distribution, distribution agreement, wholesale, wholesale market.

ДИСТРИБЬЮТОРСКИЙ ДОГОВОР КАК СПЕЦИФИЧЕСКИЙ ИНСТРУМЕНТ РЕГУЛИРОВАНИЯ ОТНОШЕНИЙ НА РЫНКЕ ОПТОВОЙ ТОРГОВЛИ

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АННОТАЦИЯ

Статья посвящена изучению правовой природы дистрибьюторских договоров, их нормативного регулирования, субъектного состава и существенных условий этой категории договоров. Автором также рассмотрен дистрибьюторский договор как специфический инструмент регулирования отношений на рынке оптовой торговли.

Ключевые слова: дистрибуция, дистрибьюторский договор, оптовая торговля, рынок оптовой торговли.

Problem setting. The lack of regulatory regulation of distribution activities, its subject matter, subject composition, contractual forms of implementation is a significant gap in the Ukrainian legislation, which does not have time to cover a number of important legal relations.

This circumstance also affects the legal status of participants in distribution activities, limits its development through the prism of evaluation of the provisions of Antimonopoly legislation.

It is argued that the supply of goods not to all, without exception, wholesalers, namely distributors, as elected business entities, indicates a significant development of a single manufacturer, also the creation of a product that is in demand and enjoys the trust of consumers.

That is, business entities, that are granted the right to distribute such a product, minimize financial risks and focus mainly on the process of presentation, placement, advertising, increase in points of sale and promotion of such products, which are granted the right to distribute such a product mediating their activities through distribution contracts.

The **purpose** of the article is to characterize the distribution contract as a tool for regulating relations in the wholesale market.

Analysis of recent researches and publications. Study of the legal

nature and peculiarities of the distributor agreement have devoted their works of scholars such as Y. Belousova, A. Borisova, O. Zueva, V. Maslova, etc.

Article's main body. The first priority should be to investigate the legal nature of the distribution contract, the subject composition, its essential conditions, to determine its place in the system of economic contracts in the field of wholesale trade, providing its characteristics.

Distribution activity has a special specific meaning, different from other types of management, which is formed by a combination of a set of legal contractual structures (sale, supply, commercial mediation, services, commercial concession), based on the creation of conditions for increasing demand and sales volumes of wholesale consignments, maintaining the business reputation of the relevant products and the manufacturer in a certain territory [1].

The parties to the distribution agreement are business entities. There are different approaches to the definition of the management side in the scientific literature, which is called the principal, manufacturer, supplier, seller, importer.

The producer is the main subject of distribution activity with a wide range of powers in this sphere of wholesale economic and trade activity.

A distributor is a wholesale market entity (legal entities and individual entrepreneurs), which has the exclusive right to buy and sell goods of a particular manufacturer. Distributors make transactions on their own behalf and at their own expense.

It is possible to establish subjects of distribution activity from legal definition (the producer and the distributor), the volume of obligations: sales, creation of a dealer network, the organization of pre-sale preparation and guarantee service.

Distributors carry out economic activities on their own behalf, enter into agreements with both sellers and buyers, have warehouses, are engaged in the service of products and perform many other intermediary functions. Quite often act as general intermediaries of a certain manufacturer [2].

That is, an important role in these legal relations also belongs to the manufacturer, whose interest in attracting a distributor as a counterparty, and no other market participants, is due to the main features of distribution activities.

The peculiarity of the legal status of the subjects of distribution activity is that the right manufacturer to choose a distributor, to establish the conditions of its delivery, storage, presentation, sale,



sales territory, price policy corresponds to the ability of the distributor to purchase goods in the property, to obtain the privileged status of the distributor of exclusive products, which should provide significant economic benefits.

On the basis of provisions of Art. 181 of the Economic code of Ukraine the distribution contract shall be concluded in the form of the uniform document signed by the parties [3].

Conclusion of this agreement in a simplified way is unlikely, given the need for detailed regulation of the relationship between the parties (through the exchange of letters, faxes, telegrams, telephone messages, by confirming the acceptance of orders).

It is obvious that the distribution contract does not require notarization and/or state registration, considering the lack of legal definition and regulatory consolidation.

The transfer of intellectual property rights under the distribution agreement does not create such an obligation either, since this requirement is not expressly provided for in part 1 of Art. 366 of the Economic code of Ukraine [3].

Thus, the distribution contract is concluded in writing, does not require notarization and / or state registration.

Approval by the Cabinet of Ministers of Ukraine of the standard form of the distribution agreement is considered inappropriate, since these legal relations require priority legislative regulation, the intervention of the state body will indicate the restriction of competition and the free will of the participants of economic relations.

At the same time, a standard distribution contract is applied at the level of international economic relations.

This agreement regulates the question of territory, goods, functions of the distributor, abstention from competition, organization of sales, distribution of advertising costs, fairs, exhibitions, prices (including resale, Commission payments), conditions of supply to the distributor, guaranteed sales volumes, agents, information on the sale, sale of goods outside the territory, trademarks, confidentiality, product stocks, warranty service, monopoly, term of the contract, early termination, damages in case of termination, return of documents and stocks, dispute resolution, etc.

These provisions are subject to implementation in national legislation with

a view to its harmonization with international normative regulation.

An important aspect in the standard form of the distribution contract is the regulation and perception of the monopoly position of the distributor in the relevant market, which is detailed by determining the supplier's ability to sell goods to other buyers within the territory of the distributor [4].

That is, the acquisition of such status is quite acceptable and legal in international trade, which indicates the need to harmonize national Antimonopoly legislation with the provisions above.

Given the content of the Model distribution agreement it is impossible to determine its essential conditions, which should include provisions on the subject, goods (stocks, service), sales prices and remuneration of the distributor, territory, functions of the distributor, sales organization, conditions of supply to the distributor, guaranteed sales volumes, monopoly, term of the contract, conditions and consequences of early termination of the contract.

Within the framework of our legal system, we consider it necessary to clarify the essential terms of the distribution agreement, which should reflect the essence of this type of economic activity and the existing normative regulation of contractual economic relations on the basis of which the distribution activity is formed as a direction of wholesale economic and commercial activity.

A significant difference of the distribution contract is its close contact with the contract of sale of goods, which is manifested in ensuring the ratio of the most commercially significant conditions relating to the relationship between the seller and the buyer (price, terms of payment, guarantees, basic terms of delivery), and is achieved either by reference to the general terms of delivery agreed upon at the conclusion of the distribution contract [4].

Therefore, the essential terms of the distribution agreement will include such essential terms and conditions that are imposed by the legislator at the conclusion of contracts of sale, wholesale supply, provision of services, commercial concession.

That is, the essential conditions of this type of contract should include the conditions of:

– **the subject** (the rights and obligations of the parties concerning the scope of authority of the distributor, which it receives from the manufacturer with the purpose of taking actions concerning product promotion, the establishment of the plan of sales of goods, minimum levels of implementation, encouraging measures to increase the number of sold goods);

– **object** (name, quality, completeness, range of goods);

– **wholesale price** (includes not only agreements on the cost of the manufacturer's goods, but also selling prices for the distributor's contractors, commercial margins, distributor's remuneration, the amount of marketing fees and advertising activities, the cost of the distributor's use of intellectual property rights);

– **term** (including delivery terms, deferred payments, contract term and reasons for its extension);

– **terms of delivery of wholesale consignments**, including the definition of the person carrying out the transportation (as a rule, this obligation is placed on the distributor, the manufacturer undertakes to ensure a sufficient number of ordered and ready-to-ship goods in stock);

– **conditions for pre-sale preparation, ensuring the presence of the goods in the relevant retail chains and the fulfillment of warranty obligations;**

– **the territory of the contract** (determined by the geographical scope of economic activity of the distributor aimed at the implementation and presentation of the manufacturer's goods);

– **conditions of exclusivity** (the right of the manufacturer to sell goods in the territory of the distributor, the conclusion of contracts with other distributors in the same territory, the right of the distributor to sell goods of other manufacturers, to involve sub-distributors and to form a dealer network, sanctions for violation of geographical boundaries of distribution activities);

– **the content and volume of business operations for the provision of services** (advertising, marketing, presentation activities that the distributor performs in order to increase sales of goods);

– **the content of business reputation, intellectual property**



rights, the use of which is allowed to the distributor (determining the rights of the distributor to allow other persons to use the set of rights granted to him, establishing the obligation to observe the quality of the relevant product, maintain the reputation of the manufacturer, to provide information about the manufacturer of the goods and the use of the trademark, not to disclose the secrets of production, other commercial confidentialities).

That is, the distribution contract must contain ten groups of essential conditions, which is due to the mixed legal nature and a wide range of economic relations that are subject to regulation.

One of the most extensive and important in the contractual regulation is the condition of exclusivity.

So, the wholesale economic – the scope of the distributor's powers within the agreed contractual territory is determined in different ways: in the form of granting the distributor the exclusive right to sell (the distributor is the only reseller of the goods in the relevant territory, even with the exception of the manufacturer) the monopoly right to sell the goods (the manufacturer enters into contracts with other contractors with the consent of the distributor and supplies the goods exclusively to the distributor), the preferential right to sell (the distributor receives priority and initial proposals for the sale of the goods), however, it is not the only subject of sale in the relevant territory), public right of sale (sale of goods is made by both the manufacturer and several distributors who acquire such status on the basis of the same conditions that are formed by the manufacturer).

Yaroslava Belousova indicates that the manufacturer of the goods may have several distributors of their goods, describing the status of the distributor, but in other regions; subject to the distribution of the goods through the distributor, the manufacturer has no right to sell its goods on a certain market and the distributor to other persons, as well as other distributors; the distributor independently forms its own sales network [5].

Exclusivity may consist in limiting the right of the manufacturer or its related persons or other authorized distributors to sell goods in the territory assigned to the distributor; at the same time, the manufacturer may grant the distributor

exclusive rights to sell only a certain part of the range of its products or prohibit the sale of goods via the Internet, etc. [6].

B. Dmochowski defines a fairly comprehensive list of criteria which may be determined by the condition of exclusivity in the distribution agreement: obligations restricting competition within the same product (brand), and commitments that restrict competition between multiple products (brands).

The terms of the exclusivity agreement may contain more than one provision at a time [7].

In addition, it should be noted that the conditions of exclusivity may also determine the legal capacity of the distributor to use intellectual property rights, goodwill, operating secrets, commercial confidentialities.

Thus, the terms of the distribution agreement, which regulate economic relations on exclusivity, may be classified as follows:

- by subject composition (restrictions concerning the manufacturer or distributor);
- the scope of economic competence (determine the possibility of the manufacturer's activities in the territory of the distributor, regulate the rights of the manufacturer to attract other distributors to the relevant territory, the distributor's ability to form a dealer network);
- territories (geographical borders of economic activity of the distributor and the producer concerning wholesale parties of goods, determining of the minimum number of points of sales of production);
- object (include the conditions to ensure the sale of a certain amount of goods, as well as the admissibility of activities with respect to similar or similar products of other manufacturers, the acquisition of related products, the transfer of intellectual property rights, trade secrets, business reputation);
- circle of consumers (conditions that impose on the distributor the obligation to organize the sale of goods only to the target circle of consumers);
- price (the establishment of the manufacturer's selling prices depending on the volume of goods sold and the implementation of the sales plan for a certain period; the establishment of the manufacturer's recommended

selling prices to wholesale buyers, determining the amount of remuneration of the distributor, the establishment of the order of payments: pre-payment or deferred payment).

At the same time, the most used in the business turnover are the terms of the territory, the exclusive right to sell the goods, the obligation to buy the goods of only one manufacturer, the conditions for ensuring the sale of the corresponding amount of goods, the obligation to purchase related products.

Conclusions. Thus, the provisions of the distribution agreement are contractual, regulatory, basic, subject-specific, back-to-back, complex, personal, property economic obligations.

It is important to note that not all exclusivity provisions are theoretically defined to meet the requirements of the law.

Therefore, it is possible to identify the grounds for determining the conditions of exclusivity in the distribution contract on legal status: legal (legal) and anti-competitive conditions (violate the requirements of antitrust laws).

These factors, which form the conditions of exclusivity, contribute to obtaining a dominant or monopoly position in the wholesale market, limiting competition due to the distributor significant price advantages over the possibility of purchasing products from the manufacturer by other market participants.

Also, the actions of the manufacturer (importer) and distributor can be qualified as agreed and result in the imposition of penalties by the Antimonopoly Committee of Ukraine.

Therefore, an important aspect of the dissertation research is the definition of the maximum permissible limit of wholesale economic activity of the distributor, making recommendations on the normative acceptable formulations that should be used by the parties during the conclusion and implementation of distribution contracts.

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RECOGNITION OF INVESTOR'S PROPERTY RIGHTS AS A WAY OF PROTECTION IN THE SPHERE OF HOUSING CONSTRUCTION IN UKRAINE

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SUMMARY

The article investigates the practical aspects of applying recognition of the right as one of the ways to protect the property rights of investors in housing construction in Ukraine. A comprehensive analysis of judicial practice about recognition of rights in the case of non-recognition or objection of property rights of investors has been carried out. It has been established that the investor's property right is interpreted by the courts as a right of claim to the investment fund management company and/or construction company. Particular attention is paid to the prerequisites for recognition of the right to housing in Ukraine. It is determined that the prerequisite for the recognition of the right to housing is the commissioning of an object by the state admissions committee.

Key words: recognition of right, disputation, investor's property right, protection of civil rights and interests, housing construction, violation.

ПРИЗНАНИЕ ПРАВ СОБСТВЕННОСТИ ИНВЕСТОРА КАК СПОСОБ ЗАЩИТЫ В СФЕРЕ ЖИЛИЩНОГО СТРОИТЕЛЬСТВА В УКРАИНЕ

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АННОТАЦИЯ

Статья посвящена исследованию практических аспектов применения признания права как одного из способов защиты имущественных прав инвесторов в сфере строительства жилья в Украине. Проведен комплексный анализ судебной практики в части признания права в случае непризнания или оспаривания имущественного права инвестора. Установлено, что имущественное право инвестора трактуется судами как право требования к компании по управлению инвестиционными средствами и / или застройщика. Особое внимание уделено необходимым предпосылкам для признания права на жилье в Украине. Определено, что для признания права на жилье необходимой предпосылкой является введение объекта в эксплуатацию государственной приемочной комиссией.

Ключевые слова: признание права, оспаривание, имущественные права инвестора, защита гражданских прав и интересов, жилищное строительство, нарушение.

Statement of the problem. One of the ways to protect civil rights and interests under Art. 16 of the Civil Code of Ukraine is the recognition of the right. This provision applies to all subjective civil rights. Non-recognition of a right or its objection is one of the forms of encroachment on the civil rights of a person, as a result of which the latter can't realize it. At the same time, in different spheres of social relations, the use of this protection method has its own specifics.

Recognition of the right can be applied as an independent way of protection,

and also can be combined with other means of security and protection of subjective civil rights. The latter depends on the nature of the violation of property rights, its consequences and the purpose of its termination.

The person, whose rights are violated, chooses the way of protection by himself. Applying appropriate way to protect the rights of investors in the construction determines their existence. That is, at the time of violation of the property right, the person must have his legally certified confirmation. However, this