

The Tunisian legal regime of exclusive commercial representation contracts

In its initial version, the Act of 29 July 1991 on competition and prices did not include any prohibition on exclusive commercial representation contracts¹. This prohibition was introduced by the Act of 24 April 1995, which inserted a new paragraph in Article 5 of the 1991 Act, according to which:

"Concession and exclusive commercial representation contracts are prohibited in all cases... Any commitment, agreement or contractual clause relating to any of the practices prohibited under this article shall be null and void"².

In 1999, the legislator again intervened in this area to temper the prohibition, by amending Article 5 as follows:

"Except in exceptional cases authorized by the Minister of Commerce, after consulting the Competition Council, concession and exclusive commercial representation contracts shall be prohibited"³.

In 2005, the legislator took a new step forward, moving from exceptional validity and with the authorization of the Minister of Commerce, to the validity of exclusive agreements. The Act of 18 July 2005 thus exempts exclusive agreements from the Minister's authorization and implicitly admits their validity.

Act No. 2015-36 of 15 September 2015 on the reorganization of competition and prices does not prohibit exclusive agreements.

Even if they are now authorized, exclusive agreements constitute a favorable ground for the development of other practices prohibited by article 5 of the aforementioned law, especially illegal agreements and abuses of economic dependence. The impact of exclusive agreements on competition is therefore assessed by the Competition Council on a case-by-case basis.

Exclusivity agreements may involve an unlawful cartel in cases where the parties to an exclusivity agreement seek to exclude competitors from access to an oligopolistic market.

These exclusive agreements may also create a situation of abuse of economic dependence following the abusive termination of established commercial relations. Abuse of economic dependence is generally observed in customer-supplier relationships. It is characterized by a situation where a company takes unfair advantage of the state of total dependence in which a trading partner finds itself because of exclusivity to impose abnormal commercial conditions.

¹ See Article 5

² See JORT 1995.p.976.

³ See JORT 1999.p.703.

