



PROBLEMS OF LEGAL REGULATION OF DEALER ACTIVITIES AND DEALER RELATIONSHIPS IN THE REPUBLIC OF MOLDOVA: THEORETICAL ASPECT

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DOI 10.32782/EP.2023.4.16**

In the article, the author reveals the features of an independent type of trading activity – dealer activity and an unnamed agreement – a dealer agreement. In the Republic of Moldova, dealer activity is very common, however, the current legislation does not establish legal regulation of this type of trading activity, and there is no dealer agreement in the civil code. In this regard, in this article, the author scientifically proves the independence of the dealer activity and the dealer agreement.

Keywords: dealer activity, dealer agreement, dealer, distributor.

In the legislation of the Republic of Moldova, the term “dealer” or “dealer activity” is not disclosed and has no legal regulation, although there are separate references to it in the legislation. So, according to paragraph d) part (3) of Art. 13 of the Law of the Republic of Moldova “On the production and circulation of ethyl alcohol and alcoholic products” No. 1100 dated 06/30/2000[3], an economic entity requesting a license, in addition to the documents provided for by the Law “On licensing certain types of activities” No. 451 dated July 30, 2001 year, must submit: “a copy of the permission of at least one manufacturer to carry out the wholesale sale of alcoholic products in the mode of dealer activity – for the storage and wholesale of domestic alcoholic products through specialized warehouses.”

In point. c) part (1) Art. 2 of the Law of the Republic of Moldova “On Commodity Exchanges” No. 1117 of February 26, 1997 [4] states that “exchange trading is carried out

through exchange transactions by an intermediary on its own behalf and at its own expense for the purpose of reselling goods on the exchange (dealer activity)”.

From the above legislative acts, it can be seen that the legislator uses the concept of “dealer activity”, but does not disclose its legal content.

The word dealer comes from the English “dealer” – merchant, agent. [6, c.121]

A dealer is considered in two capacities: 1) a legal or natural person, a member of the stock exchange, conducting exchange operations not as brokers, but acting on its own behalf and at its own expense, independently buying and selling securities, currencies, precious metals; 2) an individual or legal entity that buys products in bulk and sells them at retail or in small lots. [9, c.325]

It should be noted that in foreign legislation the content of the concept of “dealer” is revealed to a greater extent. For example, according to Art. 1 of the Federal Law of the Russian Federation “On the Technical Inspection of Vehicles” No. 170-FZ of 07/01/2011 [13], a dealer is a legal entity or an individual entrepreneur who, on the basis of an agreement concluded with a manufacturer or importer (distributor) at his own expense and undertakes on its own behalf to carry out service and maintenance of vehicles of certain brands without the obligation to sell such vehicles. It should be noted that the concept of a dealer in commercial circulation is wider than in the above normative act and, in our opinion, the

activities of a dealer are not limited exclusively to vehicle service activities, but in practice the dealer has the right to sell vehicles. The dealer purchases vehicles from the manufacturer, and becomes their owner, and then sells them to individuals and legal entities. [11, c.101]

In the Republic of Belarus, a dealer is considered as a commodity distribution network entity that sells (services) the manufacturer's goods on its own behalf at its own expense on the terms determined by the relevant agreement or contract with the manufacturer or an authorized organization.

In Germany, a dealer agreement is usually a mixed agreement: an agency agreement, an agency agreement and an agreement on the use of know-how. [8, c.117]

Interestingly, when analyzing the activities of dealers in the car market, Volgin V.V. notes that Audi's support includes: 1) consulting on construction and architecture issues; 2) consulting on business planning; 3) consulting on standards and processes; 4) selection, training and development of personnel through the Audi Academy; 5) technical support on-line and through the Atlantic Center; 6) control over the system of compliance with standards and processes.[2, c.27]

Analyzing what is indicated in the German Commercial Code, we note that in the dealer activity in this state, the manufacturer puts forward both quantitative and qualitative criteria. On this occasion Fesenmeier G. notes that quantitative criteria are characterized by the fact that dealer agreements can only be concluded with a limited number of partners that meet qualitative criteria. The quality criteria, in turn, include the following: 1) training of sales personnel; 2) level of service (after-sales); 3) requirements for the range of goods; 4) requirements for product presentation (brand image); 5) the possibility of "shopinshop" – solutions (for example, in shopping centers). [15, s.283]

In France, dealer activity has many names: exclusive commission agent, concessionaire, general agent, etc. The legal regulation of dealer activity in France has common features with the legal regulation of dealer activity in Germany. This conclusion is also confirmed by the fact that dealers are subject to quantitative

and qualitative requirements, which we mentioned above when examining the legal regulation of dealer activities in Germany. So Volgin V.V. notes that in such cases, the manufacturer independently "creates" its dealers. Thus, the car companies Citroen, Ford, Renault have created their own multi-brand dealer companies in the network of car services in France. This, for example, "Eurorepair", "Motocraft". [2, c.70]

It should be noted that dealership is widely used in the field of the securities market and the banking sector. Thus, in the UK, a dealer bank sells securities [7, c.62] and a primary dealer is a dealer company offering new securities. In the US, the dealer operates mainly in the field of buying and selling securities, and dealership is identified with the concept of "franchising".[10, c.45]

Thus, it can be concluded that dealer activity is mainly used in the field of car sales, since the manufacturer himself builds his dealer network in order to quickly and efficiently sell vehicles and thereby impose qualitative and quantitative requirements on dealers.

In the Republic of Moldova, dealer activity is quite developed and involves, to a greater extent, the sale of vehicles, as well as their service. To justify this, we will cite several dealer companies operating in the Republic of Moldova, including:

1) Toyota Center Chişinău "Continent" is the official dealer of Toyota cars in the Republic of Moldova, which sells and provides service for Toyota cars. 2) AutoFrame – FM is an official dealer of Chevrolet cars, which sells and carries out maintenance of cars of these brands. 3) DAAC Autotest, DAAC Hermes, Integral Auto are the official dealers of Renault and Dacia car brands that sell and service these car brands. 4) Grand Premium is the official distributor of Mercedes-Benz cars, acting as an official seller, service and warranty service for Mercedes-Benz cars. 5) Autospace – the official dealer of the car company). "Mitsubishi Motors", and "BMW" car company, selling and servicing cars of "Mitsubishi" and "BMW" brands in the territory of Moldova. 6) Nistru-Lada – the official dealer of the AvtoVAZ car company, which sells and service cars of the VAZ brands in Moldova.

The foregoing confirms once again that the dealer carries out not only technical and service maintenance of vehicles, but also sells them. The main purpose of the dealer is to sell cars, and service is an additional function, since the sale of cars brings the dealer more of the income than maintenance. It should be noted that the dealer sells vehicles at retail prices under sales contracts, and provides car servicing separately on the basis of a paid services agreement.[8, c.87]

In the Republic of Moldova, there is no legal regulation of dealer activity, and there are no scientific studies of this problem. In this regard, we will investigate the issue of legal regulation of the dealer agreement and its difference from the distribution agreement.

As noted, a dealership agreement for car service is concluded with: 1) the manufacturer, 2) the distributor. The contract concluded between the manufacturer and the dealer for the sale of vehicles to retail buyers in its content fully coincides with the distribution agreement.

Egorova M.A. notes the similarity in nature and design of the dealer and distributor agreements, but they have a specific subject composition: this is a distributor who has received goods from the manufacturer and a dealer who purchases goods from a distributor. [5, c.313]

Stepanchikova Yu.S. reasonably noted that the basis for distinguishing a “distributor” from a “dealer” was based on three criteria. Firstly, the distributor acts on behalf of the manufacturer of the goods, the dealer on his own behalf. Secondly, the region of the distributor’s activity is limited, while the activity of the dealer is not limited to a certain region. Thirdly, the distributor carries out only the sale of goods, in turn, the dealer carries out the sale or service of the goods.[12, c.201]

Most authors agree that the terms “dealer” and “distributor” are synonymous, although the latter is more widely used in world contractual practice. As noted by F. Bortolotti, if a dealer agreement is singled out, it is only on the basis that the dealer resells the goods at the retail level.[14, p.316]

The basis of the dealer’s activity is independent trade, in which he himself becomes

the owner of the purchased goods and acts as a party to the transactions. In this sense, dealer activity cannot be attributed to forms of intermediary activity. This is an independent activity of participants in commercial turnover associated with the acquisition of goods in their ownership for the purpose of their further resale. Related to this are the features of the trading activities of dealers: 1) dealers always act in their own interests, and not in the interests of customers; 2) the purpose of their activities is the resale of goods; 3) their actions are always speculative – the profit is made up of the difference between the sale and purchase price of the goods, and not from the remuneration of clients, as with brokers; 4) the dealer acts in the trade turnover as a trader, and not as an intermediary.

Dealer-supplier relations, in addition to distribution agreements, may be formalized by an “agreement on granting the right to sell”. In accordance with this agreement, the parties enter into contracts for the supply of goods. This name of the agreement is not well-established, and in practice you can also find other names when the seller grants the buyer the right or exclusive right to sell: agreement on the right of exclusive sale and purchase (in the USA), commercial concession agreement (in France, Belgium, Switzerland), an agreement on the exclusive right to market (in the UK). [1, c.64]

Under such an agreement, the supplier (seller-exporter) grants the importer (dealer) the right to sell (concession to sell) its goods in a certain territory and within a specified period. The buyer in these relations does not represent anyone, but acts on his own behalf, at his own expense and at his own risk, i.e. he is an independent party under the contract and acquires ownership of the goods from the seller.

Immediately after the delivery of the goods, the dealer makes settlements with the supplier and actually becomes the owner of the goods, and then sells these goods on his own behalf and at his own expense. But unlike the usual resale of goods purchased under contracts of sale, when the new owner is not bound by any obligations with the seller from whom he purchased the goods, the

dealer is obliged to sell the goods purchased from the supplier on the terms determined by the agreement between them on granting the right to sell. As a rule, this agreement establishes a minimum sales volume for a certain period of time, and if the actual sales volume is below the established minimum, the supplier has the right to terminate the agreement. The agreement may also include conditions on joint cooperation of the parties in promoting goods to the market of the country of importation of goods, on marketing, advertising, after-sales service of goods to end consumers, staff training, etc.

A number of additional obligations may be imposed on the dealer: 1) organization of advertising; 2) pre-sales service (showrooms, sales exhibitions); 3) maintenance of goods; 4) observance of the interests of the supplier; 5) ensuring conditions for its goods that are not worse than for goods of other suppliers; 6) informing your supplier of information about your activities.

With respect to setting prices, dealers are completely independent. An agreement may grant a monopoly right to a certain dealer to sell the supplier's goods in a particular territory. Then, with large and constant sales volumes, the dealer creates his own distribution network. When creating such a network, the supplier can no longer enter this market with goods of the nomenclature that is determined by the agreement, either independently or through other dealers. If he still needs to enter this market, he must pay a fee to such a monopoly dealer.

Therefore, when signing an agreement on granting the dealer the exclusive right to sell goods, the supplier should specify in the agreement in which cases he can independently sell his goods in this market segment.

Unless prohibited by agreement, the dealer may enter into agreements with other suppliers. An agreement with the right of "first hand" can be concluded between the parties. In this case, the supplier is obliged to first offer the product to the "first hand" dealer and only in case of his refusal can sell this product on his own or through other dealers. In addition, an agreement signed between the parties may not restrict the rights of the sup-

plier, he may enter the same market and with the same goods on his own or through other dealers.

Legalo – technically, relations with a dealer are regulated by an agency agreement, a commission agreement or an agency agreement. The amount of remuneration must be clearly defined. Dealers are remunerated in the form of the difference between the purchase price of the goods from the supplier and the price of its resale. It is necessary to specify in the contract the moment from which the dealer has the right to receive remuneration. Such a moment may be the date of the conclusion of the transaction, the date of its confirmation, the date of transfer of funds to the bank account of the principal for transactions made with third parties. The frequency of payment of remuneration should also be determined by the contract.

The dealer cooperates with the manufacturer most closely. On the contrary, he is always interested in direct sales and expanding the customer base. Dealers act on behalf of the manufacturer, they always sell the manufacturer's products to specific consumers, regardless of whether it is an individual or a legal entity. Moreover, they buy goods at the manufacturer's price, and sell them at a higher price – at the seller's price. It is this difference that constitutes the remuneration of the dealer. Sometimes the dealer receives remuneration in the form of bonuses for a large volume of goods sold.

The main task of the dealer is to find and interest the consumer. At the same time, he can make discounts for regular customers or wholesalers. The dealer's income depends only on direct sales: how much is sold, how much is received. If the dealer has not sold anything in a certain period of time, then he will not receive his money. As opposed to a distributor who can receive money from the sales of people attracted by him.

Since the dealer does not act on his own behalf, then claims for the quality of the goods are made not to him, but to the manufacturer.

Thus, summing up the above, we can distinguish the following distinctive features of a distribution agreement from a dealer agreement:

1. A distributor, unlike a dealer, is engaged in the distribution of the manufacturer's products and acts on his own behalf. Being an intermediary, the distributor works with the same intermediaries, i.e. he develops his own sales channels, builds his own dealer network, without direct contact with the buyer.

2. By purchasing products directly from the manufacturer at his own expense, then the distributor distributes it on his own behalf. However, the responsibility for the appropriate quality also falls on his shoulders, and the buyer will make claims directly to him, and not to the manufacturer.

3. As for the pricing policy, here the distributor, unlike the dealer, has relative freedom: in fact, being a seller, he has no particular interest in what the final price will be, because this is not the only product he distributes.

4. Still very often the term "distributor" is found in network marketing, because their work is paid a little differently here. The distributor here does not so much receive money for the goods sold, but rather the percentage from the transactions carried out by him "agents" and the percentage from the sales of those whom these "agents" attracted. Thus, an extensive, income-generating network is created. In network marketing, the distributor's interest is not in sales, but in "recruiting" new "agents" who will attract other people, and the latter in turn will follow.

5. A distributor who sells goods through regional distribution channels can draw up an agreement with the manufacturer that only he and no one else will be granted the right to distribute goods in a particular region.

The dealer differs from the distributor in that, firstly, his cooperation with the manufacturer is closer.

The dealer's interest lies in sales and customer base development. That is, the dealer always acts on behalf of the manufacturing company, offering its products to a specific buyer, whether it be an individual or a legal entity. Purchase of products is made at the price of the manufacturer, and sales – at the price of the dealer, the resulting difference is the payment for the work of the dealer. That is, his income depends directly on how much he sold. If the dealer has not sold anything for

a set period of time, then he will not receive any money either. In some cases, the dealer receives bonuses as a reward. This is another item on the list of differences between a dealer and a distributor.

The dealer must find a buyer and interest him. This is done through discounts and bonuses for wholesalers and regular customers. In addition, he is engaged in market monitoring, product advertising, service, etc. The dealer agreement specifies all the duties of the dealer.

We believe that it is necessary to introduce such concepts as "dealer" and "dealer activity" into the current legislation, since "de facto" such an activity exists, but "de jure" does not exist, and taking into account the specifics, it is necessary that this type of activity extends exclusively to the sale and car service, and for other goods, apply the concept of "distributor" and "distributor agreement", otherwise the dealer agreement will not differ in any way from the distribution agreement.

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