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DEALER RELATIONS

Terminations

Supplier Beware of California's Equipment Dealers Act Before Deciding on Termination of Dealers

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Modern antitrust law has made it increasingly difficult for unilateral terminations of vertical relationships between suppliers and distributors or dealers to be attacked through the use of federal and state antitrust laws.

The last remaining theory of *per se* liability—minimum resale price maintenance—is no longer *per se* under § 1 of the Sherman Act after the Supreme Court's groundbreaking decision in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007) (*Leegin*). Perhaps more important, increasingly demanding market-power screens have made § 1 and any corresponding state antitrust laws less of an issue.

However, upstream suppliers contemplating termination (or other action) with respect to dealer agreements obviously also need to consider applicable state law. In particular, in situations involving ''equipment,'' upstream suppliers need to carefully consider laws beyond antitrust, contracts and potentially applicable franchise statutes. A number of states, including California, have so-called ''equipment dealers'' statutes intended to afford greater protections to dealers than may be found within the four corners of the distribution contract. California's statute—the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act (commonly known as California's Equipment Dealers Act or CEDA), Cal. Bus. & Prof. Code § 22900 *et seq.*—while still relatively arcane, has broad applicability to all kinds of ''equipment,'' and may even apply to dealers solely doing business outside of California. There are very few cases interpreting and applying CEDA, and virtually none on the important threshold question of what exactly falls within the definition of ''equipment'' so as to confer on such dealers the substantial protections afforded by CEDA.

Originally enacted in 1992, CEDA was sponsored by an equipment dealers' trade association, out of concern that mergers and acquisitions in the 1980s resulted in significant closings of farm equipment dealerships. Sponsors of the legislation argued that dealer agreements in California offered little to no protection to small, independent (mostly family-owned) farm equipment dealers, compared to the major equipment manufacturers. The Legislature determined it necessary to regulate the business relations between independent dealers and the equipment manufacturers, wholesalers

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and distributors of agricultural, utility and industrial equipment.

The original law provided procedural and substantive protections to dealers with respect to termination of dealer agreements. It prohibited suppliers from terminating, failing to renew or substantially changing dealer agreements without cause; required suppliers to give 90 days' notice of intent to terminate and allowed dealers 60 days to cure any claimed deficiencies. It also provided protections to dealers beyond just those associated with termination. It prohibited suppliers, for example, from forcing dealers to accept unwanted equipment or accept amendments to agreements unless those amendments were also imposed on all similarly-situated dealers in California.

The current version of CEDA was the result of a 2005 amendment, again sponsored by the same trade association, ostensibly only to ''clarify, modernize, and add uniformity to existing law.'' But the changes included an apparently significant broadening of CEDA's reach by redefining the term ''equipment.'' While the 1992 version expressly excluded heavy construction, mining and forestry equipment, as well as all-terrain vehicles, the 2005 amendment expressly folds these in. CEDA now defines ''equipment'' as ''all-terrain vehicles and other machinery, equipment, implements or attachments'' used in connection with: (1) gardening and grounds maintenance; (2) agriculture or forestry; and (3) industrial, construction, mining, and utility activities, including material handling equipment. This definition expressly excludes ''self-propelled vehicles designed primarily for [ ] transportation . . . on a street or highway,'' *i.e.*, cars and trucks.

A fair reading of CEDA thus limits its scope to equipment related to vehicle-type machinery other than cars and trucks, and at least one federal district court in California has so held. *Badger Meter Inc. v. Vintage Water Works Supply, Inc.*, 341 F.Supp.2d 1115 (N.D. Cal. 2004) (CEDA was intended to apply to ''large vehicle-type machinery and related attachments'' and thus does not confer protections on a dealer of water meters). CEDA's precise scope, however, has not been the subject of any significant judicial scrutiny following the 2005 amendment. And, at least one federal district court outside California has assumed that the pre-amendment version of CEDA reached beyond vehicle-type machinery. See *Braun Elevator Co. v. Thyssenkrupp Elevator Corp.*, 379 F.Supp.2d 993 (W.D. Wis. 2005) (in affirming jury verdict for plaintiff, court assumed CEDA's applicability to distributor of elevator systems and parts).

If applicable, CEDA provides the same kinds of broad protections originally provided in 1992 and more. For example, CEDA:

- prohibits termination or material changes without good cause, whereby a dealer's failure to comply with the requirements set forth in the agreement may constitute good cause but only if those requirements are imposed on other similarly-situated dealers in California;
- requires 180 days' notice of intent to terminate and 60 days for dealer to cure any claimed deficiencies;
- requires suppliers to repurchase inventory upon termination of the agreement, or upon the death or incapacity of the dealer;
- requires suppliers to give one year's notice before requiring as a condition of renewal that the dealer complete substantial renovation of the dealership, and to provide a minimum of two years (after expiration of the one year's notice) to complete those renovations;
- if a supplier has contractual authority to approve or deny a request for sale or transfer of the dealer's business, it must do so within 60 days, and failure to act within the 60-day period is deemed an approval;
- any warranty claim submitted by the dealer must be approved or rejected within 45 days. If approved, supplier's payment of the claim must be made within 30 days of the approval; if rejected, the grounds for rejection must be consistent with the supplier's rejection of warranty claims of other dealers, and if no grounds for the rejection are provided, the claim shall be deemed approved;
- requires suppliers to provide its dealers, on an annual basis, an opportunity to return a portion of their surplus parts inventory for credit; and
- establishes a procedure for dealers to claim a lien pursuant to CEDA's provisions.

CEDA distinguishes between single-line dealers and non-single-line dealers with respect to terminations or transfers. It also creates a private right of action (with the right to recover attorneys' fees and costs), and voids contractual attempts to waive CEDA's provisions where they would otherwise apply.

There are *very few* reported cases in California (both state and federal) interpreting CEDA's applicability. Among these, in 2003, the Ninth Circuit explicitly recognized the extra-territorial reach of CEDA, applying its protections to a Danish dealer selling construction equipment exclusively within Denmark. *Gravaquick v. Trimble Navigation Intn'l Ltd.*, 323 F.3d 1219 (9th Cir. 2003). The Ninth Circuit's holding was based on the following factors: (1) CEDA did not include a geographic scope limitation limiting it to dealers located and/or doing business in California; (2) there was ''significant evidence'' that the Legislature intended to permit extra-territorial application; (3) at least one party in the dispute (the supplier) was located in California; and (4) the governing agreement included a California choice-of-law provision. To date, no reported case in California has interpreted CEDA since its 2005 amendment.

In sum, suppliers contemplating termination or other changes to their relationships with dealers possibly characterized as ''equipment'' dealers should first carefully consider whether or not CEDA applies and, if so, determine what obligations and limitations are imposed by CEDA.

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