Distribution Exclusivity in Morocco: Key Legal Risks

Client briefing | Exclusivity in Dealership Agreements in Morocco
Morocco | Key Legal Risks in Distribution Exclusivity
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Morocco's competition law specifically covers market segmentation created through distribution and dealership arrangements. In some jurisdictions, commercial agency legislation excludes registered distribution arrangements from antitrust scrutiny. Morocco has no such exclusion. It's competition law fully applies to exclusive dealership agreements, creating a conflict between commercial law and competition law. A validly signed contract alone doesn't resolve this conflict.

Under Morocco's Code de Commerce, dealership exclusivity is not automatic. The parties must expressly agree to it in writing. The Code de Commerce requires a commercial agent to obtain their principal's authorization before representing a competing principal while under contract. This is a structural loyalty obligation that binds the agent rather than the principal. Beyond this, neither agents nor distributors benefit from any statutory default exclusivity. A principal may appoint multiple dealers for the same territory or product line unless an exclusive agreement expressly provides otherwise.

The Code de Commerce defines “Agent” in two types: intermediaries who negotiate and conclude deals on the principal's behalf, and distributors who buy goods themselves for resale. Where contractual exclusivity is granted, it carries financial consequences. The principal owes commission on all transactions made within the exclusive territory or clientele, regardless of the agent's involvement in securing them.

Exclusivity can be restricted or terminated. However, the principal remains exposed to a termination indemnity claim within one year of termination, unless termination results from the agent's own serious misconduct. There is no statutory cap on this indemnity, and it cannot be excluded by agreement.

Moroccan competition law takes a clear position on how exclusivity in dealership arrangements can distort competition. Exclusive territory for the supply of goods and services can limit supply, increase prices, or reduce quality. Exclusivity can also negatively affect competition among dealers and distributors within the same distribution network.

Competition law prohibits agreements and concerted practices between businesses that prevent, restrict, or distort competition. It expressly covers vertical agreements between parties at different levels of the supply chain. Amendments extended this prohibition to vertical restraints that restrict competition, removing ambiguity about whether distribution exclusivity arrangements fall within its scope.
Morocco also has no block exemption regime for vertical agreements — no market-share threshold under which exclusive distribution arrangements are presumed lawful without closer review.

The Moroccan Competition Council (MCC) made this exposure explicit in its Compliance Guide of 25 January 2022. Exclusive distribution clauses and exclusive supply clauses are presented as arrangements that can presumptively restrict competition. The MCC has not endorsed any “safe harbour” position.

Where contractual exclusivity arrangement conflict with the provisions of the Competition Law, this may only be reconciled by individual exemption. To receive such an exemption parties must show that the arrangement improves production or distribution, or promotes technical or economic progress.

They must also show that consumers receive a fair share of the resulting benefit and that competition is not eliminated on the relevant market. This exemption is not self-executing. The burden rests entirely on the parties, and it provides no advance certainty.

This may change as the MCC's enforcement practice develops. The authority became fully operational in its current form after its reconstitution in December 2018, and its powers were most significantly reinforced in 2022. Since then, enforcement has accelerated. The MCC issued its first gun-jumping fine in April 2022. It launched a major investigation into the fuel distribution sector in June 2023, resulting in a settlement of approximately 1.84 billion Moroccan Dirhams in November 2023. Merger notification filings have more than doubled within two years.

It remains to be seen whether exclusive dealership arrangements will become a focal point of the MCC's antitrust agenda as enforcement activity grows. Until a body of decisional practice emerges that defines the limits of permissible exclusivity, the individual exemption route remains the only available tool. Parties cannot rely on their commercial law arrangements alone to shield them from competition law scrutiny.

Key takeaways

This is not only a competition law problem. The absence of automatic exclusivity under the Code de Commerce, combined with full competition law exposure where exclusivity is contractually agreed, places principals in a structurally difficult position. They cannot rely on statutory protection to secure their distribution network. Where they do secure it by contract, they face competition law risk without a block exemption to manage it. They also face termination indemnity exposure without a statutory cap to limit it.

Companies doing business in Morocco through exclusive dealers must act deliberately. Exclusivity should be agreed only where a clear pro-competitive rationale exists, and that rationale should be documented from the outset. Since parties cannot avoid the competition law exposure simply by pointing to a valid dealership contract, they must be prepared to defend the arrangement on its economic merits. Ultimately, principals and consumers bear the cost of a framework that provides neither the certainty of mandatory exclusivity nor the safety of a block exemption.

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