

Government guarantees, preferential tax and customs treatment, access to centralized investment resources.

Thus, Belarus has formulated and is carrying out a long-term investment policy. Much remains to be done however to improve the country's investment appeal. In the future, the Government is planning to focus particularly on the creation of a clear and predictable economic and legal environment. This will be embodied in more consistent actions and more consistent legislation in the sphere of investment activity. In the macroeconomic sphere, Belarusian Government is continuing to work on reducing inflation, interest rates, and tax burden, and on further liberalizing pricing policy. Plans are also afoot to work on providing publicity support to investors, enhancing the appeal of the FEZ, and resolving other issues related to the fostering of a favorable investment climate and investment image.

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## **TYING ARRANGEMENTS WITHIN THE FRANCHISE AGREEMENTS “СВЯЗЫВАЮЩИЕ СОГЛАШЕНИЯ” В ДОГОВОРАХ ФРАНЧАЙЗИНГА**

Материал посвящен проблеме так называемых “связывающих соглашений” — положений договора франчайзинга, которые в качестве условия функционирования в рамках франчайзинговой сети обязывают пользователей приобретать определенное количество товаров (услуг) только у обозначенных правообладателем поставщиков. Подобные положения вводятся для сохранения единообразия, поддержания стандартов качества и репутации сети в целом. Однако законность связывающих соглашений является весьма спорной с точки зрения антимонопольного законодательства. Поэтому их введение в договор должно быть взвешенным, с учетом соответствующих правовых норм.

Franchising confers many benefits on the franchisee. For many potential businesspersons, franchising is essentially the only realistic way to achieve business ownership. However, along with the benefits that accrue to the franchisee come obligations to the franchisor. Increasingly, franchisees have become dissatisfied by some of these obligations.

One area of dissatisfaction relates to tying arrangements that the franchisor frequently places in the franchise agreements. Rather than

controlling the franchisee's sale of product, franchisor often seeks to impose a constraint on the franchise purchases. A franchisor may attempt to restrict its franchisees by only selling its product to the franchisee if the latter agrees to also buy certain other less desired items from the franchisor. In case of franchising the first product mentioned usually franchise itself. The legality of such conditional sales, called tying arrangements, will depend to a large extent upon whether the franchisor uses its economic power over the first product to force a franchisee to purchase the second product.

Tying has always presented a serious legal challenge for companies engaged in franchising. By its nature the franchise relation is one which contains contractually imposed restrictions on the conduct of the franchisee's business. From the viewpoint of franchisor, and often times from the viewpoint of most franchisees in the franchise system, such restrictions are necessary to protect the goodwill of the trademark, the most essential component of the success of the franchise business.

Tying, or forcing a franchisee to buy something as a condition to buying or keeping its franchise, is considered to be the most common non-price antitrust claim in franchise cases.

Franchisors tend to view most supply disputes as contractual, rather than antitrust, problems and see tying suits as a threat to the customary contractual arrangements that they deem necessary to the integrity of their franchising operations. They point out that franchise agreements contain numerous restrictions on the conduct of franchisees' business operations to ensure efficiency, fairness, and reputational goodwill. They also claim that post-contractual changes in arrangements are needed from time to time to remain competitive in the marketplace. From a franchisee's point of view, restrictive supply arrangements are onerous as they hinder the efficient operation of the free market. In the view of franchisees, the injustice is particularly acute when franchisors limit approved supply sources after franchisees are already "locked-in" to a franchise agreement<sup>1</sup>.

However, the antitrust law's restrictions on tying arrangements do not prohibit all packaging of sales by a supplier. The unlawfulness of tying arrangements under the antitrust laws is aimed at prohibiting the seller's use of economic power over the tying product to obtain leverage in and increase sales over a separate tied product<sup>2</sup>. And although tying has historically been viewed as per se illegal

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<sup>1</sup> *Janet L. McDavid & Richard M. Steuer*, The Revival of Franchise Antitrust Claims, 67 *Antitrust L.J.* 209, 209 (1999).

<sup>2</sup> *Jeffrey J. Keyes et al.*, Tying, Exclusive Dealing and Franchising Issues, 987 *PLI/Corp* 1017, 1021-22 (1997).

because of its alleged anticompetitive effect on the market, only certain types of tying arrangements, meeting a number of specified criteria, are actually deemed to be per se unlawful. On the whole, the issue of tying arrangements within franchise agreements remains highly disputable and as such it deserves further examination.

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## **CLIENTING: A FAIRY TALE OR MODERN REALITY? КЛИЕНТИНГ: СКАЗКА ИЛИ РЕАЛЬНОСТЬ?**

В работе рассматриваются вопросы клиентоориентированности современного рынка и деятельности отдельных предприятий; дается общая схема организации работы в условиях предельной корректности с контрагентами.

Any firm should be client-oriented if it wants to be successful and modern. It means that there should be such catering for the clients on any management level that will give them an opportunity to satisfy their requirements in full measure.

What is necessary for a client-oriented firm (COF)?

1. Client policy should be established for the specific period of time. It should contain exact and clear goals, tasks, priorities and sources of means for organizing a proper client-base of the firm.

2. A firm should create and maintain efficient functioning of special departments and services for professional work with clients and contractors, such as a department of client relations, sales department, department of info-analytical work with clients, program for attracting new clients, sector of developing new products and services.

3. Direct and permanent work for attracting new clients to the firm should be revised daily in order to make operative corrections.

4. A certain technology of interaction with clients should be worked out and applied in main working places; permanent monitoring of competitiveness of these technologies should be introduced.

5. Evaluation of the quality of serving clients, analysis of their remarks and proposals, client surveys should be conducted permanently.

6. Clients should be provided with certain real rights.

7. A system of selling self-manufactured products should be established.