

THE IMPORTANCE OF MEDIATORS (AGENTS) IN TRADE ACTIVITY

*ChebeleanaIoanaCamelia, ChebeleanaMircea

*University of Oradea, Faculty of Environmental Protection, Oradea, Romania
e-mail:chebeleanaioanacamelia@yahoo.com
e-mail:chebeleanamircea@yahoo.co.uk

Abstract

This paperwork deals with a theme of topical interest due to its implications on the movement of products and services in society. Carrying out the activity of mediation is a matter of importance in both legal aspect as well as in economically aspect. Legal aspect is relevant due to the fact that, in order that a person can carry out the mediation business it has to meet certain conditions laid down by legal rules in force with a view to the completion of transactions on the market, and economic aspect is relevant because of the circulation of goods from an area to another area, also market by market. These features reveal the importance of mediators in the pursuit of commerce or trade activity.

Key words: mediators, international trade, commissioners, agent, broker

INTRODUCTION

Intermediaries can be distinguished one from another by your skills relating to the storage, transport, contact with customers, promotional and publicity measures. If we add image number and intermediaries, these elements influence both organization, as well as the methods of choice of the distribution of products and services. Lately it is ever more obvious a trend toward integration of the activities of distribution trends along with their concentration and specialization. Integration mode for the formation and operation of the distribution activity. It is the result of concerns of resolving problems which may arise from large number of intermediaries. Integration into the distribution process is carried out under two forms: horizontal and vertical. Horizontal integration refers to the inclusion of a Romanian company, within the framework of a stages, phases, sequences or shackles, of a large number of firms, leading to, in some instances, up to monopolise the shackles in a given territorial area (build, thus, voluntary chains of shops, branch systems). Vertical integration of the inclusion in the scope of activity of the firm of successive links of the distribution, achieving a fusion of some functions of organizational succession on the routing of goods to the consumer.

Rapid development of production and consumption highlights not only the need of mediators, but also gain their roles in economic circuit.

This is why there is a lot of talk lately distributor frequently to the role, which is "increasingly less of an intermediary, a more or less neutral, but much more of an active agent from the sale, able to poll, to stimulate and to aim application, able also to put pressure on supply and to modify the terms and conditions".[1]

MATERIAL AND METHODS

Materials used for compiling this paperwork are composed by manuals of expertise, specialized courses, treatises in commercial law and international trade law, internet sites. Methods used are legal, namely formal method, the method historical, comparative methodology, sociological method, the logic method and analytical methods, which have affected systematic analysis of information extracted from the studied sources in order to develop their views and conclusions.

RESULTS AND DISCUSSION

A system of distribution of goods and services shall be composed of one producer, one or more wholesalers, one or more retailers, which acts as a unitary system. One of them has the right to property, by giving them the right franchise or, holds a check on them, causing them to cooperate.

The effectiveness of the work of distribution of goods and services is in close liaison with the number, nature and even identity of mediators which carry out such activities.

Professor Dumitru Mazilu appreciates that, complexity and international frequency of transactions, and the stretched geographical area in which shall be conducted, have led use of natural and legal persons as mediators, with a view to exped, facilitate and achieve them in as more efficient conditions. Rights and obligations of mediators are laid down in a contract of mandate or commission. With all that these contracts have their own features, different from each other, they also have some common clauses: area or territory of action of the mediator; their clients which are the subject of the contracts; the exclusive right; the commission; reduction or brokerage. [2]

Type analysis of mediators implies type grouping and their classification according to certain criteria, such as:

a) wholesalers, retailers and small-salers. Within the same category there may be several types of agents, namely: manufacturer's agents, selling agents, agents (brokers), crank in circulation with high (thick) of goods, forming different types of distributors, some specialized in foreign trade activities or by the stock exchange, having a narrower specialisation, others

specialized in operations on the domestic market, with a much larger specialization.

b) according to the degree of dependence of the mediators, they can stand from producer in one of the following situations: high dependence, partial dependence, independence, dominant situation.

In the light of those criteria, as we are talking about a variety of items and therefore a large number of possible combinations between them, resulting in an wide range of mediators, with a deployment of their own on a scale with several steps below the report dependency. So, on the low scales, which marks the beginning of a total dependence on front of others, shall be placed dealers and producers agencies, consumers and even independent mediators (distributors). They only work as offices who contact partners. Also at this level, but as distinct types, can be placed units with advanced (large, detail) with appropriate legal status, but which, bears patrimonial liability and organizational belonging to producers. Follows, then, broker-commissioners, depositaries, jobbers, with a minimum freedom of movement between buyers and real sellers. Something with a higher degree of independence shall be entered in the following: concessionaries, agents, which, as a rule, they are imposed conditions for the marketing of the products, such as the price and the area of activity of the company. The top of the scale is occupied by commercial companies almost independent, which is teaming up with each other (in the form of supply centers, voluntary chains, cooperative groups), in order to achieve, with more efficiency, various operations and to withstand competition.

On the last level of scale are located trade firms of wholesale and retail. Mediators shall be classified in integrated trade with : private sector, consisting of large shops with many branches; integrated cooperative sector functions, where the wholesale and retail packaged shall be performed by a single company to intervene directly between the producer and consumer; independently trade: wholesalers and retailers, associated consisting trade of: groups of wholesalers, groups of retailers, timing chains voluntary, franchise. List of criteria used in the analysis of the mediators type is much more stretched out, so in addition to above, may be taken into account other criteria, such as the size of mediated units, their age, prestige, the zone of action. Mediators characterizes a particular sphere of activity, taking over a part of the tasks assigned to producers, thus contributing to the sale and promoting efficiency of goods by providing specialized services against a proportion of benefit. Recoursing to mediators, the producer, which is, in principle, free to sell its products directly to final consumers, delegate some of its power to mediators, give up the exercise a certain control on the sale policy and ties, in one way or another, his company's success of their activity.

The place and the role of mediators result from the following aspects: allow for reduction of the number of transactions, approached the manufacturer of the market, allow cost savings physical distribution (those for transport and storage) and the risks, they can achieve better these requirements by means of a specialized nature of their work, releasing producer to achieve such a transport and taking care of stocks during the year. A product may not perform their role, their reason for being, only at the time when enters in the final consumption need, satisfying consumer who bought them. But, on the way from the producer to the consumer, in contemporary conditions is not as a general rule, neither simple nor short and no cheap. For this reason connection between production and consumption is carried out through the movement of goods, merchandise.

Mediators are individuals (such as persons) or organizations, which may or may not be product holders (owners of the product). If the mediator is entitled, shall assume risks and benefits too. Existence of mediators is determined by: specialisation of undertakings, some in the production, *inter alia* in the distribution channel, ensuring proper satisfactions of consumer, that even if only of course, for convenience, but especially in view of the lack of time, they prefer to find goods in a single department (this has led to the emergence can be found), the increase in complexity, especially for the manufacturing industry which has no need for a system as complex for the exchange of goods and services, geographical distance of the manufacturer and the user becomes higher, and dispersion of consumers require a more efficient distribution.

By the activities of mediators depend in a large extent the fate of a business, and in which they put their hopes in the first place the producers in order that they can accelerate exchanges, but also the consumers, so that they give chance to satisfy the needs, placing them at their disposal goods that occur in society. For producers, the mediators carry out the sale part of business, financing, assuming risks, physical distribution, promotion, therefore trading activities, the movement of the products to the final consumer. For the consumer, the mediators are those which ensures access to products, at the right time and in the right place, with the smallest financial expenses.

Depending on the nature and the type of the representative authorization, in continental law practice were distinguished two forms of mediators: ► first form based on relations of mandate, shall be carried out in a situation in which the agent acts in the name and account of person which is represented; ► second form, based on the report of commission, shall be carried out in a situation in which the agent acts in its own name but on behalf of person which is represented. In the latter case, in order that the effects of acts thus completed to be passed on person which is represented,

must intervene another instrument by which the agent send to the person which is represented, all rights which they had taken and who had entered into his assets, intervening so a transfer of the rights acquired by agentthe acts concluded on someone else's account. On the basis of classification referred to we have the following classes of mediatores: those who act in the name and on account of the person which is represented—mandatary, agents, agencies, courtier, and mediators acting in his own name but on behalf of the person which is represented – commission agent, consignataire.[4]

Mediatores can be divided in two categories: traders and operationalmediatores.

A. Traders - become the owners of goods that they buy from the manufacturer and then sell them to consumer, assuming all the risks that incumbent upon the owner. They can get high profit if they manage to sell the merchandise, but they may lose, in proportion to the degree of release of the consignment. In this category shall include: Wholesaler - who buy merchandise from the manufacturer (only consumer goods) and then sell to another mediator. They buy to sell and usually provide purchaser, which is not the final consumer, credit, transport; Retailer - produces direct link with the consumer; Industrial distributor - has the same position and function as wholesaler, but on the market of goods of production, paying facilities to industrial buyers; Franchiser - the owner of a business ideas which has been successful, an idea which is assigned to a number of franchise holders.

B. Functional mediatores - do not become the owners of goods which they mediate, but they get commission or fee for the services they provide, such as for: transportation, storage, financing. In this category shall include the following: *The Agent*—which is a natural or legal person who acts with an authorisation received from another natural or legal person, for the purpose of completion of treatment and the legal acts or for carrying out of materials benefits, representative of a professional quality, independent, responsible for execution mode of the current term of office. The agent is the empowered mediator to interfere in other countries the commercial business. It may act as an agent with or without representation, so if it is acting as an representation agent it may negotiate and conclude commercial transactions and operations, and if it is acting as an agent without representation, he can only send offers and orders received for their principal[2]; *CombintionAgent* -is an mediator who combines the work of the dealer with the real estate broker and who work in the brokerage agencies, in the stock exchange or in its own society of consulting, representing a seller or a buyer on the basis of a contractual agreement, but it does not become owner, but also receives a commission or an amount for the services they provide; *TheBrokerageAgency*— it's a joint stock company who buys and sells goods or forward contracts to their clients'

account, based on a commission. *The Brokerage Agent* is an mediator who is in charge with the mediation of concluding contracts through the implementation of two competitors potential partners. He don't have the capacity neither the buyer nor the seller of the goods which are the subject of transaction, unable to negotiate for himself. It is neither seller nor buyer of the goods which are the subject of transaction. He does not conclude those contracts, only arrange the signature of them.[2] He is always an independent trader who makes a profession of mediation, through the completion of business without stepping in the contract and, as a result, he has no responsibility in the execution of the contract. *Broker* - is an agent, but with more restricted functions, since he only organizes meetings, usually at regular intervals, with a view to trade negotiations. They specialise in categories of goods : power supply, real estate, insurance, which features major fluctuations in the market. As a compensation for his activity he receives a brokerage fee or commission. As a representative of the principal, the broker concluded business without holding in its possession and under the control g traded goods. The most important mission of broker is to ensure the sale of goods which were made available by the principal, being regarded as very effective in the relationship between exporters and importers; *The Factor* - is an mediator who works in his own name, having a right of possession and control of the property of entrusted to it for sale by the principal, acting in his own name but on behalf of the principal amount; *The holder of a franchise* - can be an organization or an individual who obtain the exclusive right to exploit an idea of business of the franchisor in exchange for a fee (chains of restaurants, fast-food); *Mediatores* - which ensure that deposits, the banks, the insurance companies that are involved in the process of exchange; *Wholesalers of 'cash & carry stores'* type which take the property to the goods, but they sell only to traders who come and wish to buy goods by paying directly in cash - "cash" and deliver products alone - 'carry'. They sell goods when driving faster than ever, and grade it provides is limited. They do not carry out deliveries, do not grant credit to customers for solded goods and neither does not provide market information; *Commissioners* are mediators who enter physically in the possession of products and negotiating their sale. In the usual manner, they are not used on the long term of time, and most often they are used in agricultural markets by farmers who do not wish to sell on their own products, and which do not belong to cooperatives of producers. Commissioners transports goods to central square, sell them at the best possible price, deducted from this price the fee and their own costs, and the rest of them yield to the producer.[3]

CONCLUSIONS

Mediation in international trade has exceeded the traditional meaning of this concept, including a multitude of transactions which registers an extension of the sphere of mediation and a diversification of the forms under which it can be. In conclusion, mediation is to bring in the activity of interposer between the producer and final consumers. At the same time, it also includes different ways of marketing of the goods or of the provision of services, the operations being committed by a person in the name and on his behalf, or in the interest of another person, which provides a more efficient distribution of goods and services. Professional activity of the mediation in trade field, is a distinct figure which unlike other categories of intermediaries, enables to other persons without permanent powers on the basis of a contract, only in the course of trade.

Mediation in trade field has certain distinctive features, namely: ► it is a professional activity; ► it is an activity which is carried out for other people; ► it is an activity which is carried out by a person who does not have permanent powers under contract; ► it is an intercessory activity of the completion of certain categories of contracts (contracts of sale and purchase of goods, securities, insurance, banking transactions, transport of goods, renting of goods). Actions of mediators in the trade field consists in conclusion of contracts between the customer and third parties, as well as in indication of the conclusion of them. Mediation in commerce can be distinguished from simple mediation, namely that covered by Civil Code, by the fact that: ► activitatea of mijlocire, in the case of commerce intermediation is one professional and permanent; ► intermediarul trade operates without special authorisation on the basis of a contract. The powers trade intermediary in the field it is clear from the nature of work done by him; ► domeniile of intermediaries in commerce are strictly determined. Thus, the scope of applicability of intermediation affects contracts for the purchase or sale of goods or securities; in the field of insurance mediation; mediation banking transactions; mediation in the carriage of goods.

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