The Ferrari Law and the future of regulation in Brazil's automotive sector

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At the end of the 2023, the Office of the Prosecutor General (PGR – *Procuradoria Geral da República*) filed a lawsuit ("Submission on Violation of a Fundamental Precept" - ADPF – *Arguição de Descumprimento de Preceito Fundamental*), challenging the constitutional compliance of various provisions of Law 6.729/1979, known as the Ferrari Law (after the lawyer who ushered the legislation through Congress, not the Italian car manufacturer), as amended by Law 8.132/1990. The case was assigned to Justice Edson Fachin.

The ADPF argues that the main purpose of the Ferrari Law was to establish a system that would protect car dealers from the economic power wielded by automakers at the time the legislation was enacted.

According to the PGR, the whole structure and design of the Ferrari Law was conceived at a time of strong state interventionism, and the legislation is no longer compatible with the values adopted on Brazil's return to democracy, as affirmed by the 1988 Constitution, such as a free market.

The ADPF contends that various provisions of the Ferrari Law are contrary to the Constitution and Brazil's current economic system, notably the principles of free enterprise (articles 173§4 and 1(IV), and article 170), freedom to contract (article 5(II), free competition (article 170(IV)), consumer protection (article 5(XXXII) and article 170(V)) and the requirement for legislation to repress abuse of economic power (article 173§4).

In summary, the ADPF argues that the following provisions of the Ferrari Law ceased to have effect when the 1988 Federal Constitution came into force:

1. the prohibition against the sale by dealerships of vehicles manufactured or produced by another automaker (art. 3§1(b));
2. the territorial restriction on sales by dealerships and the "radius clause", which fixes a minimum distance between commercial establishments;
3. the quota system for motor vehicle sales and inventory (art. 7);
4. the "loyalty index", which requires dealerships to purchase a minimum percentage of vehicle components directly from the automaker (art. 8), along with vehicle quotas (art. 9) and the requirement to maintain certain levels of vehicle inventories (art. 10);
5. the prohibition against sales by dealerships for the purpose of resale (art. 12), and against sales by automakers directly to end users (art. 15);
6. the automakers' prerogative to require dealerships to apply the same price and terms of sale (art. 13);
7. the possibility of collective agreements between automakers and/or dealerships to supplement the provisions of the Ferrari Law (arts. 17 to

19);

8. the minimum duration of dealership agreements (arts. 21 and 27), and
9. the nullity of contractual provisions contrary to the Ferrari Law (art. 30).

Given the range of provisions challenged in the ADPF, it is clear that Supreme Court's ruling in the case could have a significant impact on the market and the rules that currently govern the relationship between automakers and dealerships – a system that has been in place since the 1980s.

The matter is particularly sensitive as it significantly impacts a crucial segment of the Brazilian economy. The debate over the issues raised in the ADPF promises to be engaging, with contributions from sector businesses and associations being vital to comprehending its effects. These contributions are expected to shed light on the implications implications for light and heavy commercial vehicles, automobiles, tractors and motorcycles before the case is ripe for judgment by the STF.

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