



Pursuant to Article 9, paragraph (2), of the Law on Protection of Competition ("Official Gazette of the Republic of Macedonia" No. 145/10 and 136/2011), the Government of the Republic of Macedonia, on its session held on 23.03.2012, adopted the following:

Regulation on block exemption of certain categories of vertical agreements ("Official Gazette of the Republic of Macedonia" No. 42/2012)¹

Article 1

General provision

This Regulation regulates the scope of application of the block exemption, the detailed conditions in terms of market shares, conditions for exemptions, restrictions and obligations that certain categories of vertical agreements for exclusive right of distribution, exclusive purchasing, franchising, and other vertical agreements shall not contain (hereinafter: vertical agreements) and detailed conditions for the withdrawal of the block exemption

Article 2

Definitions

(1) Certain terms used in this Regulation shall have the following meaning:

a) "block exemption" means exemption of certain vertical agreements from application of the provisions on prohibited agreements stipulated in Article 7 paragraph (1) of the Law on Protection of Competition (hereinafter: the Law);

b) "vertical restraint" means a restriction of competition in a vertical agreement falling within the scope of Article 7 paragraph (1) of the Law;

c) "competing undertaking" means an actual or potential competitor whereupon:

- "actual competitor" means an undertaking that is active on the same relevant market;

- "potential competitor" means an undertaking that, in the absence of the vertical agreement, would, on realistic grounds and not just as a mere theoretical possibility, in case of a small but permanent increase in relative prices be likely to undertake, within a short period of time, the necessary additional investments or other necessary switching costs to enter the relevant market;

d) "non-compete obligation" means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 80 % of the buyer's total purchases of the contract goods or

¹ This Regulation is harmonized with Commission Regulation (EU) No.330/2010 of 20 April 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (Text with EEA relevance) *OJL 102, 23.4.2010, p. 1-7*. CELEX no.32010R0330



services and their substitutes on the relevant market, calculated on the basis of the value or, where such is standard industry practice, the volume of its purchases in the preceding calendar year:

e) "selective distribution system" means a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorized distributors within the territory reserved by the supplier to operate that system:

f) "intellectual property rights" includes industrial property rights: know how, copyright and neighboring rights:

g) "know-how" means a package of non-patented practical information, resulting from experience and testing by the supplier, which is secret, substantial and identified whereupon

- "secret" means that the know-how is not generally known or easily accessible:

- "substantial" means that the know-how is significant and useful to the buyer for the use, sale or resale of the contract goods or services:

- "identified" means that the know-how is described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality

h) "buyer" includes an undertaking which, under an agreement falling within Article 7 paragraph (1) of the Law, sells goods or services on behalf of another undertaking:

i) "customer of the buyer" means an undertaking not party to the agreement which purchases the contract goods or services from a buyer which is party to the agreement:

i) "active sales" shall mean sales made by active approach of individual customers by sending mail, e-mail or direct visits or with actively approaching to exclusive customer group or customers in a specific territory by advertising in the media, on internet or other promotions specifically aimed at a particular customer group or customers in a specific territory:

k) "passive sales" are unsolicited requests from individual customers including delivery of goods or services to them, especially general advertising or promotion that includes consumers from exclusive territories or groups of customers allocated to other distributors, but that is a reasonable way to reach the consumers outside those territories or customer groups.

(2) For purposes of this Regulation, the terms "undertaking", "supplier" and "buyer" shall include their respective connected undertakings.

Article 3

Scope of application of the block exemption

1) Vertical agreements are exempt from the application of the provisions of Article 7 (1) of the Law if they meet the conditions stipulated in this Regulation, in accordance with Article 7 paragraph 3) and Article 9 paragraph (1) point 2) of the Law



2) The exemption shall apply if the agreements set out in paragraph (1) of this Article contain vertical restraints

3) The exemption provided for in paragraph (1) of this Article shall apply to vertical agreements entered into between an association of undertakings and its members, or between such an association and its suppliers, only if all its members are retailers of goods and if no individual member of the association, together with its connected undertakings, has a total annual turnover not exceeding 2 million EUR in denar equivalent. Vertical agreements entered into by such associations shall be covered by this Regulation without prejudice to the application of Article 7 paragraph (1) of the Law to horizontal agreements concluded between the members of the association or decisions adopted by the association.

4) The exemption provided for in paragraph (1) shall apply to vertical agreements containing provisions which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers. The exemption applies on condition that, in relation to the contract goods or services, those provisions do not contain restrictions of competition having the same object as vertical restraints which are not exempted under this Regulation.

5) The exemption provided for in paragraph (1) shall not apply to vertical agreements entered into between competing undertakings. However, it shall apply where competing undertakings enter into a non-reciprocal vertical agreement and:

(a) the supplier is a manufacturer and a distributor of goods, while the buyer is a distributor and not a competing undertaking at the manufacturing level; or

(b) the supplier is a provider of services at several levels of trade, while the buyer provides its goods or services at the retail level and is not a competing undertaking at the level of trade where it purchases the contract services.

Article 4

Detailed conditions in terms of market shares thresholds that need to be met for the application of the block exemption

(Market share threshold)

(1) The exemption provided for in Article 3 of this Regulation shall apply on condition that the market share held by the supplier does not exceed 30 % of the relevant market on which it sells the contract goods or services and the market share held by the buyer does not exceed 30 % of the relevant market on which it purchases the contract goods or services.

(2) The exemption provided for in Article (3) of this Regulation, where in a multi party agreement an undertaking buys the contract goods or services from one undertaking party to the agreement and sells the contract goods or services to another undertaking party to the agreement, the market share of the first undertaking must respect the market share threshold provided for in that



paragraph both as a buyer and a supplier in order for the exemption provided in paragraph (1) to apply.

(3) For the purposes of applying the market share thresholds provided for in paragraph (1) of this Article the following rules shall apply:

a) the market share of the supplier shall be calculated on the basis of market sales value data and the market share of the buyer shall be calculated on the basis of market purchase value data. If market sales value or market purchase value data are not available, estimates based on other reliable market information, including market sales and purchase volumes, may be used to establish the market share of the undertaking concerned;

b) the market shares shall be calculated on the basis of data relating to the preceding calendar year;

c) the market share of the supplier shall include any goods or services supplied to vertically integrated distributors for the purposes of sale;

d) if a market share is initially not more than 30 % but subsequently rises above that level without exceeding 35 %, the exemption provided for in Article 3 of this Regulation shall continue to apply for a period of two consecutive calendar years following the year in which the 30 % market share threshold was first exceeded;

e) if a market share is initially not more than 30 % but subsequently rises above 35 %, the exemption provided for in Article 3 of this Regulation shall continue to apply for one calendar year following the year in which the level of 35 % was first exceeded;

f) the exemption of points (d) and (e) of this Article may not be combined so as to exceed a period of two calendar years;

(4) For the purpose of calculating total annual turnover within the meaning of Article 3 paragraph (3) of this Regulation the sum of the turnover of the contracting party in the vertical agreement and the turnover generated by its connected undertakings in the previous fiscal year in respect of all goods and services after deduction of all taxes and other charges is taken, thereby not taking into account the turnovers from sales of goods and services among the party of the vertical agreement and its related undertakings or among its connected undertakings.

(5) The exemption of Article 3 of this Regulation shall remain applicable where, for a period of two consecutive fiscal years, the threshold of the total annual turnover not exceed by more than 10%.

Article 5

Restrictions that vertical agreements shall not contain

(Hardcore restrictions)

The exemption provided for in Article 3 of this Regulation shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

(a) the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a



sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties:

(b) the restriction of the territory into which, or of the customers to whom, a buyer party to the agreement, without prejudice to a restriction on its place of establishment, may sell the contract goods or services, except:

- the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer.

- the restriction of sales to end users by a buyer operating at the wholesale level of trade.

- the restriction of sales by the members of a selective distribution system to unauthorized distributors within the territory reserved by the supplier to operate that system, and

- the restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier:

c) the restriction of active or passive sales to end users by members of a selective distribution system operating at the retail level of trade:

d) the restriction of cross-supplies between distributors within a selective distribution system, including between distributors operating at different level of trade and/or:

e) the restriction, agreed between a supplier of components and a buyer who incorporates those components, of the supplier's ability to sell the components as spare parts to end-users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods.

Article 6

The obligations that vertical agreements shall not contain

1. The exemption provided for in Article 3 of this Regulation shall not apply to the following obligations contained in vertical agreements:

a) any direct or indirect non-compete obligation, the duration of which is indefinite, whereupon the non-compete obligation which is tacitly renewable beyond a period of five years shall be deemed to have been concluded for an indefinite duration or any direct or indirect non-compete obligation the duration of which exceeds five years, except when contract goods or services are sold by the buyer from business premises and land owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete obligation does not exceed the period of occupancy of the business premises and land by the buyer.

b) any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services, except when these obligation:

- relates to goods or services which compete with the contract goods or services:



- the obligation is limited to the premises and land from which the buyer has operated during the contract period;
 - the obligation is indispensable to protect know-how transferred by the supplier to the buyer;
 - the duration of the obligation is limited to a period of one year after termination of the agreement.
 - the duration of the obligation is unlimited in time on the use and disclosure of know-how which is not public domain and/or
- c) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers.

Article 7

Detailed conditions for the withdrawal of the block exemption

Commission for Protection of Competition may withdraw exemption if in a proceedings initiated ex officio or upon request of a party determines that the vertical agreement which is subject to the exemption in Article 3 of this Regulation, have consequences that are not in accordance to the conditions laid down in Article 7 (3) of the Law, and particularly if it determines the existence of particularly significant anti competitive effects that may arise from the existence of parallel networks of vertical agreements having similar effects which significantly restrict access to the relevant market or competition therein. (Such as cumulative impacts may arise in the case of selective distribution or non-compete obligations)

Article 8

Transitional period

All vertical agreements entered into under the Regulation on block exemption granted to vertical agreements on exclusive right of distribution, selective right of distribution, exclusive right of purchase and franchise ("Official Gazette of the Republic of Macedonia" No. 91/05) need to harmonize with the provisions of this Regulation no later than March 1, 2013

Article 9

Termination

On the day this Regulation on block exemption granted to vertical agreements on exclusive right of distribution, selective right of distribution, exclusive right of purchase and franchise ("Official Gazette of the Republic of Macedonia" No. 91/05) shall cease to be valid.

Article 10

Entry into force

This Regulation shall enter into force on the eight day after its publication in the "Official Gazette of the Republic of Macedonia".



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