

Pursuant to Article 9 paragraph (2) of the Law on Protection of Competition ("Official Gazette of the Republic of Macedonia" No. 145/10 and 136/11), the Government of the Republic of Macedonia on its session held on 23.03.2012, adopted the following

Regulation on the specific conditions for block exemption of certain categories of horizontal specialization agreements ^(*)

Article 1

General provision

This Regulation shall regulate the scope of application of the block exemption, the specific conditions in relation to the market shares that must be met for the application of the block exemption, the restrictions that may not be contained in the horizontal specialization agreements, as well as the detailed conditions for withdrawing the block exemption.

Article 2

Definitions

- (1) Certain terms used in this Regulation shall have the following meaning:
- a) “block exemption” means the exemption of certain types of specialization agreements from the application of the provisions on prohibited agreements stipulated in Article 7 paragraph (1) of the Law on Protection of Competition (hereinafter “the Law”);
 - b) “specialization agreement” means a unilateral specialisation agreement, a reciprocal specialisation agreement or a joint production agreement;
 - c) “unilateral specialization agreement” means an agreement between two parties which are active on the same product market by virtue of which one party agrees to fully or partly cease production of certain products or to refrain from producing those products and to purchase them from the other party, who agrees to produce and supply those products;
 - d) “reciprocal specialization agreement” means an agreement between two or more parties which are active on the same product market, by virtue of which two or more parties on a reciprocal basis agree to fully or partly cease or refrain from producing certain but different products and to purchase these products from the other parties, who agree to produce and supply them;
 - e) “joint production agreement” means an agreement by virtue of which two or more parties agree to produce certain products jointly;

^(*) This regulation is harmonized with Commission Regulation (EU) No. 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements OJ L 335 18.12.2010. pages 43-47. CELEX no. 32010R1218.

- f) “product” means a good or a service, including both intermediary goods or services and final goods or services, with the exception of distribution and rental services;
- g) “production” means the manufacture of goods or the preparation of services and includes production by way of subcontracting;
- h) “preparation of services” means activities upstream of the provision of services to customers;
- i) “relevant market” means the relevant product and geographic market to which the specialisation products belong. In addition, where the specialisation products are intermediary products which one or more of the parties fully or partly use captively for the production of downstream products, the relevant product and geographic market to which the downstream products belong;
- j) “specialisation product” means a product which is produced under a specialisation agreement;
- k) “downstream product” means a product for which a specialisation product is used by one or more of the parties as an input and which is sold by those parties on the market;
- l) “competing undertaking” means an actual or potential competitor;
- m) “actual competitor” means an undertaking that is active on the same relevant market;
- m) ‘potential competitor’ means an undertaking that, in the absence of the specialisation 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 not more than 3 years, the necessary additional investments or other necessary switching costs to enter the relevant market;
- n) “exclusive supply obligation” means an obligation not to supply a competing undertaking other than a party to the agreement with the specialisation product;
- o) “exclusive purchase obligation” means an obligation to purchase the specialisation product only from a party to the agreement;
- p) “joint”, in the context of distribution, means that the parties:
 - carry out the distribution of the products by way of a joint team, organisation or undertaking; or
 - appoint a third party distributor on an exclusive or non-exclusive basis, provided that the third party is not a competing undertaking; and

- q) “distribution” means distribution, including the sale of goods and the provision of services.
- (2) For the purposes of this Regulation, the terms ‘undertaking’ and ‘party’ shall include their respective connected undertakings.

Article 3

Scope of application of the block exemption

- (1) Specialization agreements shall be exempted from the application of the provisions of Article 7 paragraph (1) of the Law if they meet the conditions determined by this Regulation, and in accordance with Article 7 paragraph (3) and Article 9 paragraph (1) point 2) of the Law.
- (2) The group exemption shall apply if the agreements referred to in paragraph (1) of this article contain restrictions on competition falling within the scope of article 7 paragraph (1) of the Law.
- (3) The block exemption from paragraph (1) and (2) of this article shall apply to specialization agreements containing provisions which relate to the assignment or licencing of intellectual property rights to one or more of the contracting parties, provided that those provisions do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation.
- (4) The block exemption from paragraph (1) and (2) of this article shall apply to specialization agreements whereby:
 - a) the contracting parties accept an exclusive purchase or exclusive supply obligation ; or
 - b) the contracting parties do not independently sell the specialization products, but jointly distribute those products.

Article 4

Detailed conditions regarding market shares that must be met for the application of block exemption

- (1) The block exemption referred to in Article 3 of this Regulation shall apply on condition that the combined market share of the parties does not exceed 20 % on any relevant market.
- (2) The market share from paragraph (1) of this Article shall be calculated based on:
 - a) the market sales value, and if such data are not available, estimates based on other reliable market information, including the market sales volumes, may be used to establish the market share of the contracting parties;
 - b) the data relating to the preceding calendar year.

- (3) If the market share referred to in paragraph (1) of this Article is initially not more than 20 % but subsequently rises above that level without exceeding 25 %, the exemption provided for in Article 3 of this Regulation shall continue to apply for a period of 2 consecutive calendar years following the year in which the 20 % threshold was first exceeded.
- (4) If the market share referred to in paragraph (1) of this Article is initially not more than 20 % but subsequently rises above 25 %, the block exemption provided for in Article 3 of this regulation shall continue to apply for a period of 1 calendar year following the year in which the level of 25 % was first exceeded.
- (5) The block exemption from paragraphs (3) and (4) of this Article may not be combined so as to exceed a period of 2 calendar years.

Article 5

Restrictions that horizontal specialization agreements shall not contain

- (1) The block exemption provided for in Article 3 of this Regulation shall not apply to specialisation agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object any of the following:
 - a) the fixing of prices when selling the products to third parties with the exception of the fixing of prices charged to immediate customers in the context of joint distribution;
 - b) the limitation of output or sales with the exception of:
 - provisions on the agreed amount of products in the context of unilateral or reciprocal specialisation agreements or the setting of the capacity and production volume in the context of a joint production agreement; and
 - the setting of sales targets in the context of joint distribution; and/or
 - c) the allocation of markets or customers.

Article 6

Detailed conditions for withdrawing the block exemption

The Commission for Protection of Competition may withdraw the block exemption if, in a procedure initiated ex officio or at the request of a party, it determines that the specialization agreement 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 paragraph (3) of the Law, and particularly if the relevant market is highly concentrated and the existing competition is weak (for example due to the individual market position of other market participants or the connections between other market participants created by parallel specialization agreements).

Article 7

Transitional period

All specialization agreements entered into under the Regulation on Block Exemption of Horizontal Specialization Agreements (“Official Gazette of the Republic of Macedonia” No. 91/05) should comply with the provisions of this Regulation no later than 1 March 2014.

Article 8

Termination of validity

With the entry into force of this Regulation, the Regulation on Block Exemption of Horizontal Specialization Agreements (“Official Gazette of the Republic of Macedonia” No. 91/05) shall cease to be valid.

Article 9

Entry into force

This Regulation shall enter into force on the eighth day following the day of its publication in the “Official Gazette of the Republic of Macedonia”.