

Pursuant to Article 8 paragraph (4) of the Law on the Protection of Competition (“Official Gazette of the Republic of Macedonia” No. 145/10 and 136/11), the Government of the Republic of Macedonia at its session held on 23.03.2012, adopted the following

## **Regulation on detailed conditions for agreements of minor importance**

### **Article 1**

#### **General provision**

This Regulation regulates detailed conditions that must be fulfilled for the agreements to be considered as agreements of minor importance, and, in particular, it regulates the market shares of the contracting parties which are important for the qualification of the agreements as agreements of minor importance and the restrictions that shall not be contained in the agreements of minor importance.

### **Article 2**

For the purposes of this Regulation, the terms “undertaking”, “contracting party”, “distributor”, “supplier” and “buyer” shall include their respective related undertakings.

### **Article 3**

#### **Market shares of the contracting parties of importance for the qualification of agreements as agreements of minor importance**

- (1) An agreement of minor importance shall be considered an agreement in which:
  - a) the aggregate market share held by the parties to the agreement does not exceed 10 % on any of the relevant markets affected by the agreement, if the agreement is horizontal, or
  - b) the market share held by each of the parties to the agreement does not exceed 15 % on any of the relevant markets affected by the agreement, if the agreement is vertical.
  - c) in cases where it is difficult to classify the agreement as horizontal or vertical, the 10 % threshold is applicable.
- (2) Where in a relevant market competition is restricted by the cumulative effect of agreements for the sale of goods or services entered into by different suppliers or distributors (cumulative foreclosure effect of parallel networks of agreements having similar effects on the market), the market share thresholds set out in paragraph (1) of this Article may not exceed 5 %, both for horizontal and vertical agreements. Individual suppliers or distributors with a market share not exceeding 5 % are in general not considered to contribute significantly to a cumulative foreclosure effect.

- (3) A cumulative foreclosure effect as referred to paragraph (2) of this Article is unlikely to exist if less than 30 % of the relevant market is covered by parallel networks of agreements having similar effects.
- (4) The provisions of paragraphs (1) and (2) of this Article shall also apply if the market share of the undertakings – contracting parties does not exceed the threshold of 5%, 10% and 15% by more than 2% during two consecutive calendar years.

#### **Article 4**

##### **Hard-core restrictions agreements of minor importance shall not contain**

- (1) Horizontal agreements of minor importance shall not contain, restrictions which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:
  - a) the fixing of prices when selling the products to third parties;
  - b) the limitation of output or sales;
  - c) the allocation of markets or customers.
- (2) Vertical agreements of minor importance shall not contain restrictions 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 imposing a maximum sale price or recommending 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, the buyer may sell the contract goods or services, except the following restrictions which are not hardcore:
    - 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 to unauthorised distributors by the members of a selective distribution system, and/or

- 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, without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorised place of establishment.
  - d) the restriction of cross-supplies between distributors within a selective distribution system, including between distributors operating at different levels of trade; and/or
  - e) the restriction agreed between a supplier of components and a buyer who incorporates those components, which limits 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.
- (3) Horizontal agreements of minor importance, where the competitors operate, for the purposes of the agreement, at a different level of the production or distribution chain, shall not contain any of the hardcore restrictions listed in paragraph (1) and (2) of this Article.

## **Article 5**

### **Termination of validity**

On the date of entry into force of this Regulation, the Regulation on agreements of minor importance shall cease to be valid (“Official Gazette of the Republic of Macedonia” No. 91/05).

## **Article 6**

### **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”.