

Pursuant to Article 10 and Article 11 paragraph (1) item 2 and paragraph (2) of the Competition Act (Official Gazette, No 122/2003), the Government of the Republic of Croatia in its session held on 27 October 2004, adopted the following

**REGULATION ON BLOCK EXEMPTION GRANTED TO CERTAIN  
CATEGORIES OF HORIZONTAL AGREEMENTS**  
**(between undertakings operating on the same level of production or  
distribution chain)**

I GENERAL PROVISIONS

*Subject matter of the Regulation*

Article 1

This Regulation shall stipulate the conditions for block exemption granted to certain categories of horizontal agreements, i.e. agreements between undertakings which operate on the same level of production or distribution chain (hereinafter: horizontal agreements), set out the conditions which such agreements must contain, the restrictions or conditions which such agreements may not contain, and other conditions which must be fulfilled in order to satisfy the conditions for exemption from application of the provisions on prohibited agreements set out in the Competition Act (Official Gazette, No 122/ 2003; hereinafter: the Act).

*Definitions*

Article 2

For the purpose of this Regulation:

- a) "the Agency" means the Competition Agency;
- b) "the Act" means the Competition Act;
- c) "agreement" means the contract, single provisions of the contract, explicit or tacit agreements, concerted practices, decisions by associations of undertakings;
- d) "products" means goods and/or services including both intermediary goods and/or services and final goods and/or services, with the exception of distribution and rental services within categories of specialisation agreements;
- e) "substitute product (substitute)" means a product which by its characteristics, price, intended use and customers' patterns of purchases can serve as a substitute for another (relevant) product thereby satisfying the equivalent need of the customers;
- f) "controlled undertaking" or "connected undertakings" means undertakings within the meaning of Article 5 of the Act;

- g) "relevant market" is defined as a market of certain goods and/or services which are the subject of business operations performed by the undertaking in the specific geographic territory, within the meaning of Article 7 of the Act and the Regulation on the definition of relevant market (Official Gazette No 51/2004).

*Applicability of the block exemption*

Article 3

(1) Block exemption shall apply to horizontal agreements laid down in Article 11 paragraph (1) item 2 of the Act, entered into between two or more independent undertakings which for the purpose of the agreement operate on the same level of production or distribution chain, and particularly to:

- a) research and development agreements;
- b) specialisation agreements.

(2) Research and development agreements from paragraph (1) item a) hereof are horizontal agreements entered into between two or more independent undertakings which relate to the conditions under which those undertakings pursue:

- a) joint research and development of products or processes and joint exploitation of the results of that research and development, or
- b) joint exploitation of the results of research and development of products or processes jointly carried out pursuant to a prior agreement between the same undertakings; or
- c) joint research and development of products or processes excluding joint exploitation of the results of research and development concerned.

(3) The block exemption provided for in paragraph (1) item a) hereof shall also apply to provisions contained in research and development agreements which do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation, such as an obligation not to carry out, independently or together with third parties, research and development in the field to which the agreement relates or in a closely connected field during the execution of the agreement.

(4) Specialization agreements from paragraph (1) item b) hereof are horizontal agreements entered into between two or more independent undertakings which relate to the conditions under which those undertakings specialize in the production of products, and such agreements shall be considered:

- a) unilateral specialisation agreements, by virtue of which one party agrees to cease production of certain products or to refrain from producing those

- products and to purchase them from a competing undertaking, while the competing undertaking agrees to produce and supply those products; or
- b) reciprocal specialisation agreements, by virtue of which two or more parties on a reciprocal basis agree to cease or refrain from producing certain but different products and to purchase these products from the other parties, who agree to supply them; or
  - c) joint production agreements, by virtue of which two or more parties agree to produce certain products jointly.

(5) The block exemption provided for in paragraph (1) item b) hereof shall also apply to provisions contained in specialization agreements, which do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation, such as those concerning the assignment or use of intellectual property rights.

(6) Intellectual property rights within the meaning of paragraph (5) hereof include industrial property rights, copyright and neighbouring rights.

(7) Participating undertakings under paragraphs (1) (2) and (4) hereof shall be considered undertakings parties to the agreement and their respective connected undertakings.

(8) Competing undertaking under paragraph (4) item a) hereof means an undertaking that is active on the relevant market (an actual competitor) or an undertaking that would, on realistic grounds, undertake the necessary additional investments or other necessary switching costs so that it could enter the relevant market in response to a small and permanent increase in relative prices (a potential competitor).

#### *Inapplicability of block exemption*

#### Article 4

According to the provisions of this Regulation block exemption shall not apply to:

- a) horizontal agreements which do not fulfil the cumulative conditions laid down under Article 10 of the Act and which have not been brought into compliance with this Regulation;
- b) horizontal agreements the subject matter of which falls within the scope of any other regulation pursuant to the provisions under Article 11 of the Act.

#### II CONDITIONS THAT AGREEMENTS MUST CONTAIN AND OTHER CONDITIONS FOR EXEMPTION

##### *Conditions that research and development agreements must contain*

## Article 5

(1) The block exemption concerning research and development agreements provided for in Article 3 paragraph (1) item a) hereof shall apply subject to the following conditions:

- a) All the parties must have access to the results of the joint research and development for the purposes of further research or exploitation. However, research institutes, academic bodies, or undertakings which supply research and development as a commercial service without normally being active in the exploitation of results may agree to confine their use of the results for the purposes of further research.
- b) Each party must be free independently to exploit the results of the joint research and development and any pre-existing know-how necessary for the purposes of such exploitation, when a research and development agreement ensures only joint research and development. Such right to exploitation may be limited to one or more technical fields of application, where the parties are not competing undertakings at the time the research and development agreement is entered into.
- c) Any joint exploitation must relate to results which are protected by intellectual property rights or constitute know-how, which substantially contribute to technical or economic progress and the results must be decisive for the manufacture of the contract products or the application of the contract processes.
- d) Undertakings charged with manufacture by way of specialisation in production must be required to fulfil orders for supplies from all the parties, except where the research and development agreement also provides for joint distribution.

(2) Within the meaning of paragraph (1) item b) hereof, research and development means the acquisition of know-how relating to products or processes and the carrying out of theoretical analysis, systematic study or experimentation, including experimental production, technical testing of products or processes, the establishment of the necessary facilities and the obtaining of intellectual property rights for the results.

(3) Within the meaning of paragraph (1) item c) hereof, exploitation of the results means the production or distribution of the contract products or the application of the contract processes or the assignment or licensing of intellectual property rights or the communication of know-how required for such manufacture of the contract products or application of contract processes.

(4) Within the meaning of paragraphs (2) and (3) hereof, research and development or exploitation of the results are carried out jointly where the work involved is carried out by a joint team, organization or undertaking, or jointly

entrusted to a third party, or allocated between the parties by way of specialization in research, development, production or distribution.

(5) Within the meaning of paragraph (1) items b) and c) and paragraphs (3) and (4) hereof, know-how means a package of non-patented practical information, resulting from experience and testing, which is secret, substantial and identified: in this context, "secret" means that the know-how package as a body, or in the precise configuration and assembly of its components is not generally known or easily accessible; "substantial" means that the know-how includes information which is indispensable for the manufacture of the contract products or the application of the contract processes; "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.

(6) Within the meaning of paragraph (1) item c) hereof contract product means a product which is the subject of the agreement arising out of the joint research and development or manufactured or provided applying the contract processes.

(7) Within the meaning of paragraph (1) item c) and paragraph (6) hereof contract process means a technology or process arising out of the joint research and development.

*Duration of block exemption and market share thresholds for research and development agreements*

Article 6

(1) Where the participating undertakings are not competing undertakings, the block exemption for research and development agreements provided for in Article 3 paragraph (1) item a) of this Regulation shall apply for the duration of the research and development. Where the results are jointly exploited, the exemption shall continue to apply for seven years from the time the contract products are first put on the relevant market.

(2) Where two or more of the participating undertakings are competing undertakings, the block exemption for research and development agreements shall apply for the period referred to in paragraph (1) hereof, only if, at the time the research and development agreement is entered into, the combined market share of the participating undertakings does not exceed 25 % of the relevant market for the products capable of being improved or substituted by the contract products.

(3) After the end of the period referred to in paragraph (1) hereof, the block exemption shall continue to apply as long as the combined market share of the participating undertakings does not exceed 25 % of the relevant market for the contract products.

(4) If the market share referred to in paragraph (2) hereof is initially not more than 25 % but subsequently rises above this level without exceeding 30 %, the block exemption provided shall continue to apply for a period of two consecutive calendar years following the year in which the 25 % threshold was first exceeded.

(5) If the market share referred to in paragraph (2) hereof is initially not more than 25 % but subsequently rises above 30 %, the block exemption shall continue to apply for one calendar year following the year in which the level of 30 % was first exceeded.

(6) The benefit of block exemption within the meaning of paragraphs (4) and (5) hereof may not be combined so as to exceed a period of two calendar years.

#### *Calculation of the market share for research and development agreements*

##### Article 7

(1) Within the meaning of Article 6 of this Regulation the market share of the participating undertakings to research and development agreements shall be calculated on the basis of the market sales value of the contract products and their substitutes. If the market sales value data concerned are not available, estimates based on other reliable market information, including market sales volumes of the contract products and their substitutes in the relevant market, may be used to establish the market share of the undertaking concerned.

(2) The market share under paragraph (1) hereof shall be calculated on the basis of data relating to the preceding calendar year to the year the agreement is entered into.

(3) The market share under paragraph (1) hereof shall be increased by the market share of the respective connected undertakings realised as provided for under paragraphs (1) and (2) hereof.

#### *Conditions that specialization agreements must contain*

##### Article 8

(1) The block exemption for specialization agreements provided for in Article 3 paragraph (1) item b) of this Regulation shall apply where:

- (a) the parties accept an exclusive purchase and/or exclusive supply obligation in the context of a unilateral or reciprocal specialization agreement or a joint production agreement, or
- (b) the parties do not sell the products which are the object of the specialization agreement independently but provide for joint

distribution or agree to appoint a third party distributor on an exclusive or non-exclusive basis in the context of a joint production agreement provided that the third party is not a competing undertaking.

(2) Within the meaning of paragraph (1) hereof production means the manufacture of goods or the provision of services and includes production by way of subcontracting.

(3) Within the meaning of paragraph (1) hereof exclusive supply obligation means an obligation not to supply a competing undertaking other than a party to the agreement with the product to which specialisation agreement relates.

(4) Within the meaning of paragraph (1) hereof exclusive purchase obligation means an obligation to purchase the products to which the specialisation agreement relates only from the party which agrees to supply it.

#### *Market share thresholds for specialisation agreements*

##### Article 9

(1) The block exemption for specialisation agreements provided for in Article 3 paragraph (1) item b) of this Regulation, shall apply on condition that the combined market share of the participating undertakings does not exceed 20 % of the relevant market.

(2) If the market share of the participating undertakings is initially not more than 20 % but subsequently rises above this level without exceeding 25 %, the block exemption shall continue to apply for a period of two consecutive calendar years following the year in which the 20 % threshold was first exceeded.

(3) If the market share of the participating undertakings is initially not more than 20 % but subsequently rises above 25 %, the block exemption shall continue to apply for one calendar year following the year in which the level of 25 % was first exceeded.

(4) The benefit of block exemption within the meaning of paragraphs (2) and (3) hereof may not be combined so as to exceed a period of two calendar years.

#### *Calculation of the market share for specialisation agreements*

##### Article 10

(1) Within the meaning of Article 9 of this Regulation the market share of the participating undertakings to specialisation agreements shall be calculated on the basis of the market sales value of the contract products and their substitutes. If

the market sales value data concerned are not available, estimates based on other reliable market information, including market sales volumes of the contract products and their substitutes in the relevant market, may be used to establish the market share of the undertaking concerned.

(2) The market share under paragraph (1) hereof shall be calculated on the basis of data relating to the preceding calendar year to the year the agreement is entered into.

(3) The market share under paragraph (1) hereof shall be increased by the market share of the respective connected undertakings realised as provided for under paragraphs (1) and (2) hereof.

### III RESTRICTIONS OR CONDITIONS WHICH AGREEMENTS MAY NOT CONTAIN

#### *Hard core restrictions within research and development agreements*

#### Article 11

(1) The block exemption shall not apply to research and development 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 freedom of the participating undertakings to carry out research and development independently or in cooperation with third parties in a field unconnected with that to which the research and development relates or, in the field to which it relates;
- (b) the prohibition to challenge after completion of the research and development the validity of intellectual property rights which are relevant to the research and development or, after the expiry of the research and development agreement, the validity of intellectual property rights which protect the results of the research and development, without prejudice to the possibility to provide for termination of the research and development agreement in the event of one of the parties challenging the validity of such intellectual property rights;
- (c) the limitation of output or sales;
- (d) the fixing of prices when selling the contract product to third parties;
- (e) the restriction of the customers that the participating undertakings may sell the contract products, after the end of seven years from the time the contract products are first put on the market;
- (f) the prohibition to make passive sales of the contract products in territories reserved for other parties;
- (g) the prohibition to put the contract products on the market or to pursue an active sales policy for them in territories within the market that are

reserved for other parties after the end of seven years from the time the contract products are first put on the market;

- (h) the requirement not to grant licences to third parties to manufacture the contract products or to apply the contract processes where the exploitation by at least one of the parties of the results of the joint research and development is not provided for or does not take place;
- (i) the requirement to refuse to meet demand from users or resellers in their respective territories who would market the contract products in other territories; or
- (j) the requirement to make it difficult for users or resellers to obtain the contract products from other resellers, and in particular to exercise intellectual property rights or take measures so as to prevent users or resellers from obtaining, or from putting on the market, products which have been lawfully put on the market by another party or with its consent.

(2) Within the meaning of paragraph (1) the following provisions contained in research and development agreements shall not be considered as hard core restrictions:

- (a) the setting of production targets where the exploitation of the results includes the joint production of the contract products;
- (b) the setting of sales targets and the fixing of prices charged to immediate customers where the exploitation of the results includes the joint distribution of the contract products.

(3) Passive sales within the meaning of paragraph (1) item f) hereof shall mean sales in response to unsolicited requests from individual customers in other parties' exclusive territories, including delivery of products to such customers, to the extent that such responding is not the result of active sales operations. Sales generated by general advertising or promotion in the media or on the Internet that reaches customers in other parties' exclusive territories or customers in the respective territories, as a result of the development in the technology and since being easily accessible, are considered to be a reasonable method of approaching these customers.

(4) Active sales within the meaning of paragraph (1) item g) hereof shall mean sales made by actively searching for or approaching individual customers or customer groups inside another parties' exclusive territory. This may be for instance by initiating the conclusion of individual agreements or taking measures of general presentation of products to these customers, by establishing a warehouse or distribution outlet or organizing of distribution networks in this territory. Active approach includes visits, direct and electronic mail, advertisements in the media or other promotions specifically targeted at these customers or customer group in the other parties' exclusive territory.

## *Hard core restrictions within specialisation agreements*

### Article 12

(1) The block exemption 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:

- (a) the fixing of prices when selling the products to third parties;
- (b) the limitation of output or sales; or
- (c) the allocation of markets or customers.

(2) Within the meaning of paragraph (1) the following provisions contained in specialisation agreements shall not be considered as hard core restrictions:

- (a) 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 of a production joint venture in the context of a joint production agreement;
- (b) the setting of sales targets and the fixing of prices that a production joint venture charges to its immediate customers in the context of Article 8 paragraph (1) item b) of this Regulation.

## IV WITHDRAWAL OF BLOCK EXEMPTION AND INDIVIDUAL EXEMPTION

### *Conditions for withdrawal of block exemption*

### Article 13

(1) Pursuant to Article 11 paragraph (4) of the Act the Agency may, *ex officio*, initiate the proceedings for assessment of compatibility of a particular agreement under Article 3 of this Regulation with the provisions laid down in Article 10 of the Act and this Regulation, if such agreements have effects in the relevant market which do not fulfil the conditions for block exemption.

(2) Within the meaning of paragraph (1) hereof the Agency may initiate the proceedings for assessment of a research and development agreement, in particular where:

- (a) the existence of the research and development agreement substantially restricts the scope for third parties to carry out research and development in the relevant field because of the limited research capacity available elsewhere;
- (b) because of the particular structure of supply, the existence of the research and development agreement substantially restricts the access of third parties to the market for the contract products;

- (c) without any objectively valid reason, the parties do not exploit the results of the joint research and development;
- (d) the contract products are not subject to effective competition from identical products or products considered by users as equivalent in view of their characteristics, price and intended use (substitutes);
- (e) the existence of the research and development agreement would prevent, restrict or distort effective competition in research and development on a particular market.

(3) Within the meaning of paragraph (1) the Agency may initiate the proceedings for assessment of specialization agreements, in particular where:

- (a) the agreement is not yielding significant results in terms of rationalization or consumers are not receiving a fair share of the resulting benefit, or
- (b) the products which are the subject of the specialization are not subject to effective competition from identical products or products considered by users to be equivalent in view of their characteristics, price and intended use (substitutes).

(4) If the results of the assessment of an agreement on the compliance with the provisions of the Act and this Regulation prove that there are no grounds for the applicability of block exemption, the Agency shall by means of a decision withdraw the benefit granted by block exemption to a particular or a group of agreements.

#### *Individual exemption*

##### Article 14

Pursuant to Article 12 of the Act the undertakings - parties to the horizontal agreement may submit to the Agency a request for individual exemption, if the agreement concerned does not fall under applicability of block exemption within the meaning of this Regulation, or if it, by its nature, is not covered by any other block exemption within the meaning of Article 4 item b) hereof.

#### *Non-compulsory notification*

##### Article 15

There is no compulsory notification for the undertakings - parties to the horizontal agreement that satisfy the conditions for block exemption laid down in this Regulation, within the meaning of Article 11 paragraph (3) of the Act, i.e. such agreements need not to be submitted to the Agency for assessment in respect of individual exemption.

## V TRANSITIONAL AND FINAL PROVISIONS

### Article 16

(1) Horizontal agreements under Article 3 hereof, which have been concluded before this Regulation enters into force, must be brought in compliance with the provisions of this Regulation by 1<sup>st</sup> January 2006.

(2) As regards horizontal agreements which have been concluded before this Regulation enters into force, under the condition that they have been brought in compliance with the provisions of this Regulation within the time period set out under paragraph (1) hereof, the market share, without prejudice to Article 7 paragraph (2) and Article 10 paragraph (2) hereof, shall be calculated on the basis of the market sales value during the financial year preceding the year of the entry into force of this Regulation.

### *Entry into Force*

### Article 17

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

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Zagreb, 27 October 2004

Prime Minister

Ivo Sanader