

Pursuant to Article 10 paragraph (1) and Article 11 paragraph (1) item 1 and paragraph (2) of the Competition Act (Official Gazette, No 122/2003), the Government of the Republic of Croatia in its session held on 15 April 2004, adopted the following

REGULATION ON BLOCK EXEMPTION GRANTED TO CERTAIN CATEGORIES OF VERTICAL AGREEMENTS

I GENERAL PROVISIONS

Subject Matter of the Regulation

Article 1

This Regulation shall stipulate the conditions for block exemption granted to certain categories of vertical agreements, i.e. agreements between undertakings which do not operate on the same level of production or distribution chain (hereinafter: vertical 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 meet the conditions for exemption from application of the provisions on prohibited agreements set out in the Competition Act (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;
- e) "controlled undertaking" or "connected undertakings" means undertakings within the meaning of Article 5 of the Act;
- f) "relevant market" is defined as a market of certain goods and/or services which are the subject of the business operations performed by the undertaking in the specific geographic territory, within the meaning of Article 7 of the Act and the regulation adopted pursuant to the Act.

Applicability of the Block Exemption

Article 3

- (1) Block exemption shall apply to vertical agreements laid down in Article 11 paragraph (1) item 1 of the Act, and particularly to:
 - a) exclusive distribution agreements;
 - b) selective distribution agreements;
 - c) exclusive purchase agreements;
 - d) exclusive supply agreements;

- e) franchise agreements, with the exception of industrial (technology) franchise agreements relating to manufacture of products or technological process in the manufacture of such products;
- f) 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 and/or resale of contract products by the buyer or its customers.

(2) Exclusive distribution under paragraph (1) item b) hereof means a vertical agreement where the supplier limits his sales of contract products to only one buyer (distributor) for a certain territory or a particular class of customers which has been exclusively allocated to this buyer (distributor).

(3) Selective distribution under paragraph (1) item b) hereof means a vertical agreement where the supplier undertakes to sell the contract products, either directly or indirectly, only to distributors selected on the basis of transparent, specified criteria and where these distributors undertake not to sell such products to unauthorised distributors.

(4) Exclusive purchase under paragraph (1) item c) hereof means a vertical agreement where the buyer undertakes to purchase the contract products, either directly or indirectly, only from one particular supplier.

(5) Exclusive supply under paragraph (1) item d) hereof means a vertical agreement where the supplier undertakes to sell the contract products, either directly or indirectly, only to one buyer in the territory of the Republic of Croatia for the purposes of a specific use or for resale.

(6) Franchise under paragraph (1) item e) hereof means a vertical agreement where one party (franchisor) provides the other party (franchisee), in return for a direct or indirect fee, with the right to use the franchise, i.e. the package of industrial or intellectual property rights for manufacture and/or marketing purposes of particular products. Industrial or intellectual property rights package relates to names and trade marks or signs, know-how, models, designs, copyright, industrial knowledge or patents, for the use and distribution of contract products to end users.

Inapplicability of Block Exemption

Article 4

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

- a) vertical agreements which have not been brought into compliance with this Regulation;
- b) vertical agreements the subject matter of which falls within the scope of any other block exemption regulation pursuant to the provisions under Article 11 of the Act.

II CONDITIONS THAT AGEEMENTS MUST CONTAIN

Market Share

Article 5

(1) The block exemption shall apply to the agreements laid down in Article 3 hereof, provided that the market share held by the supplier does not exceed thirty per cent (30%) of the relevant market on which it sells the contract products.

(2) In the case of vertical agreements containing exclusive supply obligations, the block exemption provided for in this Regulation shall apply on condition the market share held by the buyer does not exceed thirty per cent (30%) of the relevant market in which it purchases the contract products.

Calculation of the Market Share

Article 6

(1) The market share on the relevant market, within the meaning of Article 5 paragraph (1) hereof shall be calculated on the basis of the market sales value of the contract products and other products sold by the supplier, which are regarded as interchangeable or substitutable by the buyer.

(2) The market share under paragraph (1) hereof shall be increased by the market sales value realized by the connected undertakings on the contract product market and their substitutes.

(3) For the purpose of calculating the market share, no account shall be taken of dealings between the supplier under paragraph (1) hereof, and connected undertakings under paragraph (2) hereof, or between its connected undertakings, relating to contract products and their substitutes.

(4) The market sales value calculated pursuant to paragraphs (1), (2) and (3) hereof shall exclude the custom duties, value added and excise duty taxes and rebates in the financial year preceding the conclusion of the agreement.

(5) The market share held by the buyer which does not exceed thirty per cent (30%) of the relevant market on which it purchases the contract products, and which represents a condition for application of block exemption in the case of vertical agreements containing an exclusive supply obligation, within the meaning of Article 5 paragraph (2) hereof, shall be calculated accordingly applying the criteria under paragraphs (1) to (4) hereof, to the market purchase value or estimates hereof.

(6) If market sales value data are not available, estimates based on other reliable market information, including market sales volumes, may be used to establish the market share of the undertaking concerned. This shall not apply if the undertaking had no activity on the relevant market in the financial year preceding the conclusion of the agreement.

(7) If the market share of the undertakings is not more than thirty per cent (30%) at the point of the conclusion of the agreement, but subsequently rises above that level without

exceeding thirty five per cent (35%), the exemption shall continue to apply for a period of two consecutive calendar years following the year in which the thirty per cent (30%) market share threshold was first exceeded.

(8) If the market share is initially not more than thirty per cent (30%) but subsequently rises above thirty five per cent (35%), the exemption shall continue to apply for one calendar year following the year in which the level of thirty five per cent (35%) was first exceeded.

(9) The benefit of paragraphs (7) and (8) hereof may not be combined so as to exceed a period of two calendar years.

Total Annual Turnover for Certain Vertical Agreements

Article 7

(1) The block exemption shall also apply to vertical agreements entered into between an association of undertakings at the retail level and its members, or between such an association and its suppliers, if:

- a) the members of such an association are distributors selling contract products to final consumers;
- b) no individual member of such an association together with its connected undertakings has a total annual turnover exceeding 50,000.000 (fifty million) HRK.

(2) Furthermore, the block exemption shall apply to vertical agreements entered into between competing undertakings, but only where competing undertakings enter into a non-reciprocal vertical agreement which does not grant equivalent rights and obligations on each of the parties, and if:

- a) the supplier is a manufacturer and a distributor of products, while the buyer is a distributor not manufacturing substitute products; and/or
- b) the supplier is a provider of services at several levels of trade, while the buyer does not provide substitute services at the level of trade where it purchases contract services; and/or
- c) the buyer has a total annual turnover not exceeding 50,000.000 (fifty million) HRK.

Calculation of Total Annual Turnover

Article 8

(1) For the purpose of calculating total annual turnover within the meaning of Article 7 hereof, the turnover achieved during the previous financial year by the relevant undertaking - party to the vertical agreement and the turnover achieved by its all connected undertakings shall be added together.

(2) For the purpose of calculating total annual turnover, no account shall be taken of dealings between the relevant undertaking and connected undertakings, or between its connected undertakings.

(3) The turnover calculated pursuant to paragraphs (1) and (2) hereof shall exclude the custom duties, value added and excise duty taxes and rebates.

(4) The block exemption provided for in Article 7 hereof shall remain applicable where, for a period of two consecutive financial years, the total annual turnover threshold is exceeded by no more than ten per cent (10%).

III RESTRICTIONS AND CONDITIONS WHICH AGREEMENTS MAY NOT CONTAIN

Hard Core Restrictions

Article 9

(1) The block exemption shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, provide for vertical restraints having as their object:

- a) the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier's 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 incentive offered by, any of the parties;
- b) the restriction of the territory into which, or of the customer to whom, the buyer may sell the contract products;
- 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 the restrictions between distributors operating at a different level of trade;
- e) the restriction agreed between a supplier of components and a buyer of those components, which limits the supplier to selling 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 products.

(2) Vertical restraints set out under paragraph (1) hereof severely restrict competition and are considered to be hard core restrictions of vertical agreements which are prohibited.

(3) This Regulation shall not cover block exemption of vertical agreements containing hard core restrictions set out under paragraph (1) hereof, irrespective of the market share of the undertakings - parties to the agreement concerned, and therefore they do not require prior relevant market analysis.

(4) Without prejudice to paragraph (1) item b) hereof, the prohibition shall not apply to the following vertical restraints having as their object:

- a) the restriction of the buyer's 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;
- b) the restriction of active and passive sales to end users by a buyer operating at the wholesale level of trade;
- c) the restriction of active and passive sales to unauthorised distributors by the members of a selective distribution system;

d) the restriction of the buyer's active or passive sales regarding the ability to sell components or spare parts, supplied for the purposes of incorporating, to customers who would use them to manufacture the same type of products (substitutes) as those produced by the supplier.

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

(6) Passive sales within the meaning of paragraphs (1) and (4) hereof shall mean sales in response to unsolicited requests from individual customers, 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 distributors' exclusive territories or customer groups, as a result of the development in the technology and since being easily accessible, are considered to be a reasonable method of approaching the customers or groups of customers.

Article 10

(1) The block exemption shall not apply to any of the following obligations contained in vertical agreements:

- a) any direct or indirect non-compete obligation, the duration of which is indefinite or exceeds five years, as well as a non-compete obligation which is tacitly renewable beyond a period of five years is to be deemed to have been concluded for an indefinite duration;
- b) any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell products;
- c) any direct or indirect obligation causing the members of a selective distribution system not to sell the substitute products of particular competing suppliers.

(2) The non-compete obligation within the meaning of paragraph (1) item a) hereof shall mean any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell the substitute products which compete with the contract products, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than eighty per cent (80%) of the buyer's total purchases of the contract products and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding financial year.

(3) Without prejudice to paragraph (1) item a) hereof the non-compete obligation, the duration of which exceeds five years shall not be considered as a prohibited vertical restraint where the contract products are sold by the buyer from the 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 non-compete obligation does not exceed the period of occupancy of the premises and land by the buyer.

(4) Without prejudice to paragraph (1) item b) hereof, a vertical restraint consisting of the non-compete obligation the duration of which is limited to one year after the termination of the agreement shall not be considered as a prohibited vertical restraint, if such obligation:

- a) relates to products which compete with the contract products (substitutes);
- b) is limited to the premises and land from which the buyer has operated during the contract period; and
- c) is indispensable to protect know-how transferred by the supplier to the buyer, and provided that such know-how is substantial and necessary for the operation of the agreement.

(5) Within the meaning of paragraph (4) hereof, the duration of the non-compete obligation which is limited to a period of one year after termination of the agreement is without prejudice to the possibility of imposing a restriction which is unlimited in time on the use, transfer or disclosure of know-how, provided that the know-how is secret, substantial and identified.

(6) Know-how within the meaning of paragraph (4) item c) and paragraph (5) hereof means a package of non-patented, technical information, resulting from experience and testing by the supplier, which is secret, substantial and identified. 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 use, sale or resale of the contract products, and especially for the presentation of the products while selling them, methods of influencing users, technically skilled staff and finance management. Identified means that the know-how must be presented in a sufficiently comprehensive manner, as to make it possible to verify whether it satisfies the criteria of secrecy and substantiality.

IV OTHER CONDITIONS FOR APPLICABILITY OF BLOCK EXEPTION

Other Important Criteria for Applicability of Block Exemption Granted to Vertical Agreements

Article 11

(1) Apart from the conditions provided for under Article 10 of the Act, and under Article 5 and Article 8 hereof, relating to the conditions vertical agreements must satisfy in order to be granted block exemption, in the assessment of agreements account has to be taken also of several factors, and in particular:

- a) the market structure on the supply and purchase side;
- b) the market position of competing undertakings and the extent to which those undertakings - parties to the agreement face competition from other suppliers of substitute products in the relevant market;
- c) the nature of non-compete obligations containing restrictions relating to inter- brand or intra-brand competition;
- d) the existence of parallel networks of vertical agreements.

(2) Vertical agreements within the meaning of paragraph (1) item c) hereof, shall be deemed compatible or prohibited depending on the economic and legal analysis of the

conditions on the relevant market in the light of their economic efficiency and the likelihood that such efficiency-enhancing effects will outweigh any anti-competitive effects due to restrictions contained in vertical agreements.

V WITHDRAWAL OF BLOCK EXEMPTION AND INDIVIDUAL EXEMPTION

Conditions for Withdrawal of Block Exemption

Article 12

(1) Pursuant to Article 11 paragraph (4) of the Act the Agency may, *ex officio*, initiate the proceedings to assess the compatibility of a particular agreement or group of agreements as laid down in Article 3 hereof, if such agreements individually or due to their cumulative effect with other similar agreements in the relevant market, do not fulfil the conditions for block exemption, and particularly where:

- a) access to the relevant market or competition therein is significantly restricted by the cumulative effect of parallel networks of vertical agreements of similar vertical restraints;
- b) vertical agreements with similar vertical restraints together cover more than fifty per cent (50%) of the relevant market;
- c) vertical agreements have such effect that the buyers have no alternative sources of supply for the contract products, or substitute products in the relevant market;
- d) due to the specific structure of the relevant market, vertical agreements in the relevant market concerned produce negative effects on competition in the connected neighbouring markets.

(2) 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 13

Pursuant to Article 12 of the Act the undertakings - parties to the 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 14

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

VI TRANSITIONAL AND FINAL PROVISIONS

Article 15

(1) Vertical agreements under Article 3 and Article 7 hereof, which have been concluded before this Regulation enters into force, must be brought in compliance with the provisions of this Regulation within six (6) months from the day of its entry into force.

(2) As regards vertical 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 6 paragraphs (4) and (6) 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.

(3) As regards vertical 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, for the purpose of calculating the total annual turnover, without prejudice to Article 8 paragraphs (1) and (2) hereof, the total annual turnover in the financial year preceding the year of the entry into force of this Regulation shall be taken into account.

Entry into Force

Article 16

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

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Zagreb, 15 April 2004

Secretary

Jagoda Premužić

Prime Minister

Ivo Sanader