

Pursuant to Article 10 and Article 11 paragraph (1) item 4) and paragraph (2) of the Competition Act (Official Gazette, No 122/2003), the Government of the Republic of Croatia in its session held on 22 July 2004, adopted the following

REGULATION ON BLOCK EXEMPTION GRANTED TO AGREEMENTS ON DISTRIBUTION AND SERVICING OF MOTOR VEHICLES

I GENERAL PROVISIONS

Subject matter of the Regulation

Article 1

This Regulation shall stipulate the conditions for block exemption granted to agreements on distribution and servicing of motor vehicles, 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 block 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) "substitute" means a product which by its characteristics, price, intended use and buyers' and/or customers' patterns of purchases can serve as a substitute for another (relevant) product thereby satisfying the equivalent need of the buyers and/or 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 the 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 the relevant market (Official Gazette, No 51/2004).

Applicability of block exemption

Article 3

(1) Block exemption shall apply to vertical agreements referred to in Article 11 paragraph (1) item 4 of the Act, concluded between two or more undertakings each of which, for the purpose of the agreement, operate on a different level of production or distribution (hereinafter: vertical agreements) with regard to the conditions under which the contracting parties purchase, sell or resell new motor vehicles, spare parts for motor vehicles or provide repair and maintenance services for such vehicles, and particularly to the agreements which:

a) apply a qualitative, quantitative or mixed qualitative and quantitative selective distribution system as a form of distribution and servicing of motor vehicles;

b) apply exclusive distribution or exclusive supply as a form of distribution and servicing of motor vehicles;

c) contain provisions on the assignment or use of intellectual property rights, provided that such provisions do not constitute the main objective of such agreements and that they are directly connected to the use, sale and/or resale of products which are the subject of the agreement on the part of the buyer or his buyers.

(2) Block exemption shall, in exceptions, apply under the conditions set forth under Article 7 of this Regulation, to particular vertical agreements entered into between an association of undertakings and its members, as well as between such an association and its suppliers, i.e. particular vertical agreements entered into between competing undertakings.

(3) Motor vehicles referred to in paragraph (1) hereof means:

a) self propelled vehicles intended for use on public roads and having three or more road wheels;

b) passenger cars intended for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat;

c) light commercial vehicles intended for the transport of goods or passengers with a maximum mass not exceeding 3,5 tonnes; if a certain light commercial vehicle is also sold in a version with a maximum mass above 3,5 tonnes, all versions of that vehicle are considered to be light commercial vehicles.

(4) Selective distribution system referred to in paragraph (1) item a) hereof means a distribution system established on the basis of the agreement on distribution and servicing of motor vehicles where the supplier undertakes to sell the contract products, either directly or indirectly, only to distributors or repairers selected on the basis of specified, transparent criteria and where these distributors or repairers undertake not to sell such products to unauthorized distributors or independent repairers, without prejudice to the ability to sell spare parts to independent repairers or the obligation to provide independent operators with all technical information, diagnostic equipment, tools and training required for the repair and maintenance of motor vehicles or for the implementation of environmental protection.

(5) Qualitative selective distribution system, as referred to in paragraph (4) hereof, means a system where the supplier determines the criteria for the selection of distributors or repairers which are only qualitative in nature. Such criteria are required by the nature of the contract products and are laid down uniformly for all distributors or

repairers applying to join the distribution system, and they may not be applied in a discriminatory manner, and may not limit the number of distributors or repairers in the relevant market.

(6) Quantitative selective distribution system, as referred to in paragraph (4) hereof, means a system where the supplier determines the criteria for the selection of distributors or repairers which directly limit their number in the relevant market.

(7) Exclusive distribution agreements as referred to in paragraph (1) item b) hereof, means vertical agreements where the supplier undertakes to sell the contract products only to one distributor selected in a particular market or to customer groups which have been allocated exclusively to this distributor.

(8) Exclusive supply agreements referred to in paragraph (1) item b) hereof, means vertical agreements where the supplier directly or indirectly undertakes to sell the contract products only to one buyer inside the market of the Republic of Croatia for the purpose of a specific use or resale.

(9) The agreement on distribution and servicing of motor vehicles may not contain a combination of the application of a selective distribution system as referred to in paragraph (1) item a) and paragraphs (4), (5) and (6) hereof, with the exclusive distribution or exclusive supply as referred to in paragraph (1) item b) and paragraphs (7) and (8) hereof within the same market.

Non-applicability of block exemption

Article 4

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

- a) vertical agreements which fail to fulfil the cumulative criteria stipulated by the provisions of Article 10 of the Act and which are not in compliance with this Regulation;
- b) vertical agreements which, according to their subject, fall into the category of some other regulation on block exemption, pursuant to the provisions of Article 11 of the Act.

II CONDITIONS THE AGREEMENTS MUST CONTAIN

Market share

Article 5

(1) Block exemption for vertical agreements referred to in Article 3 of this Regulation, shall apply on condition that the supplier's market share on the relevant market on which it sells motor vehicles, spare parts for motor vehicles and or repair and maintenance services does not exceed thirty percent (30%), or forty percent (40%) for agreements establishing quantitative selective distribution system for the sale of new motor vehicles.

(2) As an exception, the market share thresholds shall not apply to vertical agreements establishing qualitative selective distribution system referred to in Article 3 of this Regulation.

(3) In the case of vertical agreements containing exclusive supply obligation, the block exemption, within the meaning of this Regulation, shall apply on condition that the market share held by the buyer does not exceed thirty percent (30%) of the relevant market on which it purchases the contract products.

Market share calculation

Article 6

(1) The market share in the relevant market, within the meaning of Article 5 paragraph (1) of this Regulation, for the distribution of new motor vehicles, shall be calculated on the basis of the volume of the contract products sold by the supplier and other products sold by the supplier which are regarded as interchangeable or substitutable by the buyer.

(2) The market share in the relevant market, within the meaning of Article 5 paragraph (1) of this Regulation, for the distribution of spare parts, shall be calculated on the basis of the turnover realized by the supplier from the sale of the contract products and other products which are regarded as interchangeable or substitutable by the buyer.

(3) The market share in the relevant market, within the meaning of Article 5 paragraph (1) of this Regulation, for the provision of repair and maintenance services, shall be calculated on the basis of the turnover realized by the members of the supplier's distribution network from the provision of contract services together with other services which are regarded as interchangeable or substitutable by the buyer.

(4) The market share referred to in paragraphs (1), (2), and (3) hereof, shall be increased by the turnover achieved by the connected undertakings realized in the market of contract products and their substitutes.

(5) Mutual trade in contract products and their substitutes between the supplier referred to in paragraphs (1), (2) and (3) hereof, and the connected undertakings referred to in paragraph (4) of this Article, as well as the mutual trade in such contract products and their substitutes between the connected undertakings, shall not be taken into account in the market share calculation.

(6) The turnover shall be calculated in accordance with paragraphs (1), (2), (3), (4) and (5) hereof, after the deduction of customs duties, the value added tax, and other taxes directly relating to the turnover and discounts in the financial year preceding the conclusion of the agreement.

(7) The market share held by the buyer in the relevant market where it purchases the contract products which does not exceed thirty percent (30%), and which is stipulated as a condition for the application of block exemption in the case of vertical agreements containing exclusive supply obligations, within the meaning of Article 5 paragraph (3) of this Regulation, shall be calculated adequately applying the criteria

referred to in paragraphs (1) to (6) of this Article, taking into account the value of its purchases or the estimates thereof.

(8) If the turnover figures required for the calculations are not available, other available market information, including the volume data of the products sold may be used, unless the undertaking had performed the business activity in the relevant market in the financial year preceding the year of the conclusion of the agreement.

(9) If the market share of the undertaking in question is at the point of the conclusion of the agreement not more than thirty percent (30%) or forty percent (40%) in the case of the agreement establishing the quantitative selective distribution system for the sale of new motor vehicles, but subsequently rises above that level without exceeding thirty five percent (35%) or forty five percent (45%) respectively, the exemption shall continue to apply for a period of two consecutive calendar years following the year in which the market share threshold of thirty percent (30%) or forty percent (40%) respectively was first exceeded.

(10) If the market share of the undertaking in question is at the point of the conclusion of the agreement not more than thirty percent (30%) or forty percent (40%) in the case of the agreement establishing the quantitative selective distribution system for the sale of new motor vehicles, but subsequently rises above thirty five percent (35%) or forty five percent (45%) respectively, the exemption shall continue to apply for one calendar year following the year in which the market share threshold of thirty five percent (35%), or forty five percent (45%) respectively was first exceeded.

(11) The benefit of paragraphs (9) and (10) hereof may not be combined so as to exceed the exemption period of two calendar years.

Total annual turnover for certain categories of vertical agreements

Article 7

(1) Block exemption shall also apply to vertical agreements entered into between an association of undertakings and its members, or between such an association and its suppliers:

a) if all members of such an association are distributors of motor vehicles or spare parts for motor vehicles or repairers; and

b) if no individual member of such association, together with its connected undertakings has a total annual turnover exceeding fifty (50) million HRK.

(2) Block exemption shall also apply to vertical agreements entered into between competing undertakings, provided that this is a non-reciprocal vertical agreement:

a) if the supplier is a manufacturer and distributor of the products, while the buyer is a distributor not manufacturing the substitute products; and/or

b) if 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 the contract services; and/or

c) if the buyer has a total annual turnover not exceeding fifty (50) million HRK.

Total annual turnover calculation

Article 8

(1) Within the meaning of Article 7 of this Regulation, the total annual turnover shall be calculated as the total annual turnover achieved by the undertaking during the financial year preceding the conclusion of the agreement and the turnover achieved by all its connected undertakings shall be added together.

(2) For the purposes of calculating the total annual turnover as referred to under paragraph (1) hereof, no account shall be taken of dealings between the undertakings concerned and their connected undertakings or between their connected undertakings.

(3) The total annual turnover calculated pursuant to the provisions of paragraphs (1) and (2) hereof, shall exclude customs duties, the value added tax, and other taxes directly relating to the turnover and discounts.

(4) Block exemption for agreements referred to in Article 7 of this Regulation, shall remain applicable even if during the period of two consecutive financial years the total annual turnover threshold is exceeded by no more than ten percent (10%).

Article 9

Duration, termination, settlement of disputes and transfer of rights and obligations to third parties

(1) Block exemption shall apply on condition that the vertical agreement concluded by the supplier of new motor vehicles with a distributor or authorized repairer provides:

a) that the agreement is concluded for a period of at least *five years*, in this case each party to the agreement has to undertake to give the other party at least six months' prior notice of its intention not to renew the agreement; or

b) that the agreement is concluded for an *indefinite period*, in this case the period of notice for regular termination of the agreement has to be at least *two years* for both parties, whereby this period may be reduced to at least *one year* where:

- i. the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or
- ii. the supplier terminates the agreement where it is necessary to re-organize the whole or a substantial part of the network.

(2) Block exemption shall apply on condition that the vertical agreement concluded with a distributor or repairer provides that a supplier who wishes to give notice of termination of an agreement must give such notice in writing and must include detailed, objective and transparent reasons for the termination, in order to prevent a supplier from ending a vertical agreement with a distributor or repairer because of practices which may not be restricted under this Regulation.

(3) Block exemption shall apply on condition that the vertical agreement provides for each of the parties to the agreement the right to refer disputes resulting from the agreement to the Conciliation Centre of the Croatian Chamber of Commerce, this

without prejudice to the right of each party to the agreement to settle the disputes resulting from the agreement at the court of law or by arbitration.

(4) Block exemption shall apply on condition that vertical agreement concluded with a distributor or repairer provides that the supplier agrees to the transfer of the rights and obligations resulting from the vertical agreement to another distributor or repairer within the distribution system and chosen by the former distributor or repairer.

III RESTRICTIONS OR CONDITIONS WHICH AGREEMENTS MAY NOT CONTAIN

Hardcore restrictions concerning the sale of new motor vehicles, spare parts and repair and maintenance services

Article 10

(1) Block exemption shall not apply to vertical agreements on the sale of new motor vehicles, spare parts and repair and maintenance services, which directly or indirectly, in isolation or in combination with other factors under the control of the parties to the agreement, contain vertical restraints which have as their object:

a) the restriction of the distributor's or repairer's ability to determine its sale price, without prejudice to the supplier's ability to impose a maximum sale price or to recommend a sale price, provided that this does not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties to the agreement;

b) the restriction of the territory into which, or of the customers to whom, the distributor or repairer may sell the contract products;

c) the restriction of active or passive sales of new passenger cars, spare parts for motor vehicles or repair and maintenance services for motor vehicles to end users by members of a selective distribution system operating at the retail level of trade, without prejudice to a prohibition on a member of a selective distribution system from operating out of an unauthorised place of establishment up to the day of application of the provision under Article 14 paragraph (4) item b) of this Regulation as provided for by Article 20 of this Regulation;

d) the restriction of cross-supplies between distributors or repairers within a selective distribution system, including restrictions between distributors or repairers operating at different levels of trade.

(2) Vertical restraints referred to in paragraph (1) of this Article, shall be considered hardcore restrictions of competition in vertical agreements which are prohibited.

(3) No prior analysis of the conditions in the relevant market is necessary for the establishment of vertical restraints referred to in paragraph (1) hereof, since such restraints, regardless of the market share held by the participants to the agreement in the relevant market, may not be exempted under this Regulation.

(4) By way of derogation from paragraph (1) item b) hereof, the following restrictions shall not be deemed prohibited:

a) the restriction of active sales into the exclusive territory by the distributor or repairer or to an exclusive customer group reserved to the supplier or allocated by the

supplier to another distributor or repairer, where such a restriction, imposed by the supplier, does not limit sales by the customers of the distributor or repairer;

b) the restriction of active and passive sales to end users by a distributor operating on the wholesale level of trade;

c) the restriction of active and passive sales of new motor vehicles and spare parts to unauthorised distributors by the members of a selective distribution system in markets where selective distribution is applied, without prejudice to the restrictions listed under Article 12 paragraph (1) item b) of this Regulation which are considered hardcore restrictions and therefore prohibited;

d) the restriction of the buyer's ability to sell (active and passive sales) components, which are supplied to the buyer as spare parts for the purposes of incorporation, 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 another distributor's 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.

Hardcore restrictions concerning the sale of new motor vehicles

Article 11

(1) Block exemption shall not apply to vertical agreements on the sale of new motor vehicles, which directly or indirectly, in isolation or in combination with other factors under the control of the parties to the agreement, contain vertical restraints which have as their object:

a) the restriction of the distributor's rights to sell any new motor vehicle which corresponds to a model within its contract range set forth by the agreement;

b) the restriction of the distributor's right to subcontract the provision of repair and maintenance services to other authorized repairers, without prejudice to the right of the supplier to require the distributor to give end users the name and address of the authorized repairer in question before the conclusion of the sales contract.

(2) Contract range of products within the meaning of paragraph (1) item a) hereof means all the different models of motor vehicles available for purchase by the distributor from the supplier.

(3) A motor vehicle which correspond to a model within the contract range within the meaning of paragraph (1) item a) hereof, means a vehicle which is the subject of a distribution agreement with another undertaking within the distribution system set up by the manufacturer or with his consent and which is:

- manufactured or assembled in volume by the manufacturer, and
- identical as to body style, drive-line, chassis, and type of motor to a vehicle within the contract range.

(4) Authorized repairer within the meaning of paragraph (1) item b) hereof means a provider of repair and maintenance services for motor vehicles operating within the distribution system set up by a supplier of motor vehicles.

Hardcore restrictions concerning the sale of spare parts and of repair and maintenance services

Article 12

(1) Block exemption shall not apply to vertical agreements on the sale of spare parts and of repair and maintenance services which directly or indirectly, in isolation or in combination with other factors under the control of the parties to the agreement, contain vertical restraints which have as their object:

a) the restriction of the authorised repairer's ability to limit its activities to the provision of repair and maintenance services and the distribution of spare parts;

b) the restriction of the sales of spare parts for motor vehicles by members of selective distribution system to independent repairers which use these parts for the repair and maintenance of motor vehicles;

c) the restriction agreed between a supplier of original spare parts or spare parts of matching quality, repair tools or diagnostic or other equipment and a manufacturer of motor vehicle, which limits the supplier's ability to sell these products to authorised or independent distributors or to authorised or independent repairers or end users;

d) the restriction of a distributor's or authorised repairer's ability to obtain original spare parts or spare parts of matching quality from a third undertaking of its choice and to use them for the repair or maintenance of motor vehicles, without prejudice to the ability of a supplier of new motor vehicles to require the use of original spare parts supplied by it for repairs carried out under warranty, free servicing and vehicle recall work;

e) the restriction agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components which limits the latter's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts.

(2) Independent repairer within the meaning of paragraph (1) item c) means a provider of repair and maintenance services for motor vehicles not operating within the distribution system set up by the supplier of the motor vehicles for which it provides repair or maintenance. An authorized repairer within the distribution system of a given supplier shall be deemed to be an independent repairer for the purposes of this Regulation to the extent that he provides repair or maintenance services for motor vehicles in respect of which he is not a member of the respective supplier's distribution system.

(3) Original spare parts within the meaning of paragraph (1) item c) hereof means spare parts which are of the same quality as the components used for the assembly of a motor vehicle and which are manufactured according to the specifications and production standards provided by the vehicle manufacturer for the production of components or spare parts for the motor vehicle in question. This includes spare parts which are manufactured on the same production line as these components. It is presumed, unless the contrary is proven, that parts constitute original spare parts if the part manufacturer certifies that the parts match the quality of the components used for the assembly of the vehicle in question and have been manufactured according to the specifications and production standards of the vehicle manufacturer.

(4) Spare parts referred to in paragraph (1) item b) hereof means parts which are to be installed in or upon a motor vehicle so as to replace components of that vehicle, including goods such as lubricants which are necessary for the use of a motor vehicle, with the exception of fuel.

(5) Spare parts of matching quality referred to in paragraph (1) item c) hereof means spare parts made by any undertaking which can certify at any moment that the parts in question match the quality of the components which are or were used for the assembly of the motor vehicles in question.

Other hardcore restrictions

Article 13

(1) Block exemption shall not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, or training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures.

(2) Independent operators referred to in paragraph (1) hereof shall mean undertakings which are directly or indirectly involved in the repair and maintenance of motor vehicles, in particular independent repairers, manufacturers of repair equipment or tools, independent distributors of spare parts, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers.

Specific conditions agreements may not contain

Article 14

(1) Block exemption shall not apply to vertical agreements relating to the sale of new motor vehicles, of spare parts and repair and maintenance services containing any of the following restraints:

- a) any direct or indirect non-compete obligation;
- b) any direct or indirect obligation limiting the ability of an authorized repairer to provide repair and maintenance services for vehicles from competing suppliers;
- c) any direct or indirect obligation causing the members of a distribution system not to sell motor vehicles or spare parts of particular competing suppliers or not to provide repair and maintenance services for motor vehicles of particular competing suppliers;

d) any direct or indirect obligation causing the distributor or authorized repairer, after termination of the agreement, not to manufacture, purchase, sell or resell motor vehicles or not to provide repair or maintenance services.

(2) By way of derogation from paragraph (1) item a) hereof, a non- compete obligation shall not be deemed a prohibited vertical restraint where the distributor sells motor vehicles from other suppliers in separate areas of the showroom in order to avoid confusion between the makes. An obligation imposed on the distributor to have brand-specific sales personnel for different brands of motor vehicles shall constitute a prohibited vertical restraint, unless the distributor decides to have brand-specific sales personnel and the supplier pays all the additional costs involved.

(3) A non-compete obligation within the meaning of paragraph (1) item a) and paragraph (2) hereof, means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell substitute products which compete with the contact 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 30% of the buyer's total purchases, calculated on the basis of the value of its purchases in products and substitutes in the relevant market in the preceding calendar year.

(4) Block exemption shall not apply to vertical agreements relating to the sale of new motor vehicles, containing any of the following restraints:

a) any direct or indirect obligation causing the retailer not to sell leasing services relating to contract products or substitutes;

b) any direct or indirect obligation on any distributor of passenger cars or light commercial vehicles within a selective distribution system, which limits its ability to establish additional sale or delivery outlets at other locations within the markets where selective distribution is applied.

(5) Block exemption shall not apply to vertical agreements relating to the sale of spare parts and repair and maintenance services containing restraints as to the place of establishment where the system of selective distribution applies.

IV OTHER CONDITIONS FOR APPLICABILITY OF BLOCK EXEMPTION

Other important criteria for applicability of block exemption granted to vertical agreements

Article 15

(1) Apart from the conditions provided for under Article 10 of the Act, and under Article 5 and Article 9 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 relevant 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 16

(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:

a) where the 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) where competition is restricted on a market where one supplier is not exposed to effective competition from other suppliers;

c) where prices or conditions of supply for contract products or corresponding products differ substantially between relevant geographic markets of the Republic of Croatia and the EU;

d) where discriminatory prices or sales conditions are applied within a relevant geographic market.

(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 vertical agreements.

Individual exemption

Article 17

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 some other block exemption within the meaning of Article 4 item b) hereof.

Non-compulsory notification

Article 18

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 19

(1) Vertical agreements referred to in Article 3 of this Regulation, which have been concluded before this Regulation enters into force, must be brought in compliance with the provisions of this Regulation by the end of 2005.

(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 turnover realized 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 20

This Regulation shall enter into force on the eighth day following the day of publication in the Official Gazette, noting that the provision under Article 14 paragraph (4) item b) of this Regulation shall start to apply on 1 May 2006.

Class: 211-06/04-01/01
Register No: 5030105-04-1
Zagreb, 22 July 2004

Deputy Prime Minister

Jadranka Kosor, LLB; signed

