

Pursuant to Article 11 paragraph (3) of the Competition Act (Official Gazette, No 79/2009), the Government of the Republic of Croatia in its session held on 7 January 2011, adopted the following

REGULATION ON AGREEMENTS OF MINOR IMPORTANCE

I GENERAL PROVISIONS

Subject Matter of the Regulation

Article 1

(1) This Regulation stipulates conditions which the agreements of minor importance must satisfy, as well as restrictions or provisions such agreements may not contain.

(2) The provisions stipulating the prohibited agreements set out under Article 8 paragraph (1) of the Competition Act (hereinafter: the Act, shall not apply to the agreements of minor importance that comply with the conditions laid down in this Regulation.

Definitions

Article 2

For the purpose of this Regulation:

- a) "agreement" means contracts, particular provisions thereof, implicit oral or explicitly written down arrangements between undertakings, concerted practices resulting from such arrangements, decisions by undertakings or associations of undertakings, general terms of business and other acts of undertakings which are or may constitute a part of these agreements and similar, notwithstanding the fact if they are concluded between undertakings operating at the same level of the production or distribution chain (horizontal agreements) or between undertakings who do not operate at the same level of the production or distribution chain (vertical agreements);
- b) "agreement of minor importance" means the agreement as defined under Article 11 paragraph (2) of the Act that complies with the conditions laid down in this Regulation;
- c) "undertaking" means undertakings within the meaning of Article 3 of the Act;
- d) "controlled undertaking" or "connected undertakings" means undertakings within the meaning of Article 4. of the Act;
- e) "buyer" means an undertaking who purchases the product from the supplier for the purpose of its incorporation in a new product that this buyer manufactures and/or purchases the product from the supplier for the purpose of resale or sale to final consumers;

- 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 a specific geographic territory, within the meaning of Article 7 paragraph (1) of the Act and the provisions under the Regulation on the definition of relevant market.

II CONDITIONS THAT AGREEMENTS MUST COMPLY WITH

Market Share

Article 3

(1) Agreements of minor importance shall be considered agreements by which the parties to the agreement and their controlled undertakings do not hold an appreciable common market share.

(2) Within the meaning of paragraph (1) hereof the inappreciable market share shall be considered:

- a) if the total market share held by the parties to the agreement and their controlled undertakings does not exceed ten per cent (10%) on any of the relevant markets affected by the agreement, where the agreement is concluded between undertakings who are actual or potential competitors on any of these markets; or
- b) if the market share held by any of the parties to the agreement or their controlled undertakings does not exceed fifteen per cent (15%) on the relevant market affected by the agreement, where the agreement is concluded between undertakings who are not actual or potential competitors on the relevant market concerned, or
- c) if the market share held by any of the parties to the agreement or their controlled undertakings does not exceed ten per cent (10%) on the relevant market affected by the agreement, in cases where it is difficult to classify the agreement as either an agreement between actual or potential competitors or an agreement between non-competitors on the relevant market concerned.

Market Share Relating to Parallel Networks of Agreements

Article 4

(1) Without prejudice to Article 3 paragraph (2) hereof, where in a relevant market competition is restricted by the cumulative effect of agreements for the sale of products entered into by different suppliers or distributors (parallel networks of agreements having similar effects on the market), the inappreciable market share held by the parties to the agreement or their controlled undertakings shall be considered the market share threshold reduced to five per cent (5%), both for agreements between actual or potential competitors and for agreements between non-competitors.

(2) Individual suppliers or distributors with a market share not exceeding five per cent (5%) are in general not considered to contribute significantly to a cumulative foreclosure

effect, i.e. prevention, restriction or distortion of competition within the meaning of paragraph (1) hereof.

(3) The cumulative foreclosure effect is unlikely to exist if less than thirty per cent (30%) of the relevant market is covered by parallel networks of agreements having similar effects as laid down in paragraph (1) of hereof.

Article 5

It is considered that agreements of minor importance do not significantly prevent, restrict or distort competition, if the marked shares held by the parties to the agreement and their connected undertakings, as provided for under Articles 3 and 4 hereof, do not exceed the thresholds during two successive calendar years by more than two per cent (2%).

III RESTRICTIONS OR PROVISIONS AGREEMENTS MAY NOT CONTAIN

Hard Core Restrictions

Article 6

(1) The agreements which despite the inappreciable market share of the parties to the agreement and their connected undertakings, within the meaning of Articles 3, 4 and 5 hereof, containing any of the following hard core restrictions pursuant to Article 7 and Article 8 paragraph (1) hereof, i.e. containing provisions that as their effect have serious prevention, restriction or distortion of competition, shall not be considered the agreements of minor importance and shall not be covered by this Regulation.

Hard Core Restrictions in Agreements between Competitors

Article 7

Hard core restrictions provided for under Article 6 hereof, in the agreements between actual or potential competitors as defined in Article 3 paragraph (2) items a) and c) hereof, shall be considered 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.

Hard Core Restrictions in Agreements between Non-Competitors

Article 8

(1) Hard core restrictions provided for under Article 6 hereof, in the agreements between non-competitors, i.e. undertakings that are not actual or potential competitors within the meaning of Article 3 paragraph (2) items b) and c) hereof, shall be considered 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 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 unauthorized place of establishment;
- d) the restriction of cross-supplies between distributors within a selective distribution system, including the restrictions between distributors operating at different level of trade;
- 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 products;

(2) Without prejudice to Article 1 item b) hereof, the following restrictions shall not be considered hard core restrictions:

- 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.

(3) Active sales within the meaning of paragraphs (1) and (2) 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, advertisement in the media or other promotions specifically targeted at that customer group or customers in that exclusive territory of another distributor.

(4) Passive sales within the meaning of paragraphs (1) and (2) 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.

Specific Cases of Hard Core Restrictions in Agreements between Competitors

Article 9

As regards agreements concluded between competitors, within the meaning of Article 3 paragraph (2) items a) and c) hereof, where these competitors operate, for the purposes of the agreement, at a different level of the production or distribution chain, any of the restrictions listed under Article 7 and Article 8 paragraph (1) hereof shall be considered a hard core restriction.

Restrictions Relating to Parallel Network of Agreements of Minor Importance

Article 10

(1) Agency shall initiate *ex officio* proceedings on the assessment of an individual agreement of minor importance which fulfils the conditions set out in this Regulation, where it finds that competition in the relevant market is appreciably prevented, restricted or distorted by the cumulative effects of the agreement concerned together with other agreements of minor importance.

(2) Within the meaning of paragraph (1) hereof the Agency shall, as a rule, initiate proceedings, where the parallel networks of agreements having similar effects on prevention, restriction or distortion of competition cover more than thirty per cent (30%) of the relevant market.

IV TRANSITIONAL AND FINAL PROVISIONS

Article 11

This Regulation, as of the day of entry into force, replaces the Regulation on agreements of minor importance published in the Official Gazette, No 51/2004.

Entry into Force

Article 12

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

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Zagreb, 7 January 2011

Prime Minister
Jadranka Kosor