

THE GOVERNMENT OF THE REPUBLIC OF CROATIA

Pursuant to Article 10 paragraph (2) item (1) of the Competition Act (Official Gazette, No 79/2009), the Government of the Republic of Croatia in its session held on 10 February 2011, 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 stipulates the conditions which the vertical agreements between undertakings must contain and the restrictions or conditions which such agreements may not contain in order to benefit from block exemption from the general ban set out in Article 8 paragraph (1) of the Competition Act (hereinafter: the Act).

Definitions

Article 2

- a) "vertical 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, concluded between undertakings operating at the different level of the production or distribution chain, which regulate the conditions under which the parties to the agreement may purchase, sell or resell certain goods and/or services;
- b) "vertical restriction" means a restriction of competition contained in a vertical agreement which is subject to Article 8 paragraph (1) of the Act;
- c) "undertaking" is a person within the meaning Article 3 of the Act;
- d) "controlled undertaking" or "connected undertakings" means undertakings considered a single economic entity within the meaning of Article 4 of the Act;
- e) "products" means goods and/or services;
- f) "substitute product or substitute" means a product which by its characteristics, price, intended use or customers' patterns of purchases can serve as a substitute for another (relevant) product thereby satisfying the equivalent need of the customers and/or consumers;
- g) "competing undertaking" means an actual or potential competitor;

- h) "actual competitor" means an undertaking that is active on the same relevant market;
- i) "potential competitor" means an undertaking that, in the absence of one or more vertical agreements in the relevant market, would, in case of a small but permanent increase in relative prices, be likely to undertake, within a short period of time, the necessary additional investments or other necessary switching costs to enter the relevant market concerned;
- j) "customer" means an undertaking who buys the product from the supplier for the purpose of its integration in a new product and/or buys the product from the supplier for the purpose of resale or sale to the other customer or consumer;
- k) "indirect customer" is an undertaking who is not a party to the vertical agreement but he/she purchases contract goods and/or services from the customer party to the vertical agreement;
- l) "consumer" means a natural person who buys or uses the relevant product, or he/she may do so in a particular situation;
- m) "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 Regulation on the definition of relevant market.

Applicability of the Block Exemption

Article 3

(1) Block exemption shall apply to vertical agreements laid down in Article 10 paragraph (2) item 1 of the Act, to the extent such agreements contain vertical restraints, 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 agreement under paragraph (1) item (a) 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 agreement 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 agreement 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 agreement 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 agreement 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 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, which will be used for the distribution of contract products to end users.

Inapplicability of Block Exemption

Article 4

Within the meaning of Article 8 paragraph (1) of the Act the block exemption under this Regulation 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 10 paragraph (2) of the Act.

II CONDITIONS THAT VERTICAL 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 30 % of the relevant market on which it sells the contract products and the market share held by the buyer does not exceed 30 % of the relevant market on which it purchases the contract products.

(2) By way of derogation from paragraph (1) hereof, the block exemption provided in Article 3 of this Regulation shall apply to vertical multi party agreements under which an undertaking party to the agreement buys the contract products from one undertaking party to the agreement and sells the contract products to another undertaking party to the agreement, if the market share of the first undertaking (the undertaking which buys and then sells the contract products) respects the market share threshold not exceeding 30 % both in the relevant market in which it operates as a buyer and in the market in which it operates as a supplier.

Calculation of the Market Share

Article 6

(1) The market share of the supplier on the relevant market, within the meaning of Article 5 paragraph (1) of this Regulation shall be calculated on the basis of the market sales value data from the preceding calendar year taking into account the share of the supplier in the total value of all contract products sold.

(2) The market share of the buyer on the relevant market, within the meaning of Article 5 paragraph (1) of this Regulation shall be calculated on the basis of market purchase value data from the preceding calendar year taking into account the share of the buyer in the total value of all purchased contract products.

(3) The market share under paragraphs (1) and (2) hereof shall be increased by the market sales value of the sold and/or purchased products realized in the preceding calendar year by the connected undertakings in the market of contract products.

(4) The market sales value calculated pursuant to paragraphs (1), (2) and (3) hereof shall exclude all taxes and other duties.

(5) If market sales value or market purchase value data, i.e. the respective shares of the supplier and/or the buyer in the total value of sold and/or purchased contract products referred to in this Article are not available, estimates based on other reliable market

information, including market sales and purchase volumes, may be used to establish the market share of the undertakings 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.

(6) If the market share of the undertakings is initially not more than 30 % but subsequently rises above that level without exceeding 35 %, the block exemption shall continue to apply for a period of two consecutive calendar years following the year in which the 30 % market share threshold was first exceeded;

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

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

(9) The market share held by connected undertakings referred to in paragraph (3) hereof shall be apportioned equally to each undertaking.

Total Annual Turnover for Certain Vertical Agreements

Article 7

(1) The block exemption provided for in this Regulation shall also apply to vertical agreements entered into between an association of undertakings and its members, or between such an association and its suppliers, only if all its members are retailers of goods and if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding HRK 50 million.

(2) The block exemption provided for in this Regulation 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 a distributor of products, while the buyer is a distributor and not a competing undertaking at the manufacturing level (i.e. does not manufacture the products concerned or their substitutes);

b) if the supplier is a provider of services at several levels of trade, while the buyer sells its goods and/or provides its services at the retail level and is not a competing undertaking at the level of trade where it purchases the contract services;

c) if the total annual turnover of the buyer does not exceed HRK 50 million.

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 undertaking and the turnover achieved by its all connected undertakings shall be added together.

(2) For the purpose of calculating total annual turnover referred to in paragraph (1) hereof, no account shall be taken of dealings between the relevant undertaking – party to the vertical agreement and its connected undertakings, or between its connected undertakings.

(3) The turnover referred to paragraphs (1) and (2) hereof shall exclude all taxes and other duties.

(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 10 %.

III RESTRICTIONS AND CONDITIONS WHICH VERTICAL 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 which are considered hard core restrictions of competition 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 who incorporates those components, of 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) By way of derogation from 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, provided that such a restriction, imposed by the supplier, does not limit sales by the customers of the buyer (indirect customer);
- b) the restriction of active and passive sales of products to end users by a buyer operating at the wholesale level of trade;
- c) the restriction of active and passive sales of products by the members of a selective distribution system to unauthorised distributors;
- d) the restriction of the buyer's active or passive sales regarding the ability to sell components, supplied for the purposes of incorporation into a new product, 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 (2) hereof shall mean sales made by actively searching for or approaching individual customers or customer groups inside another distributor's 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 subsidy, a warehouse or distribution outlet or organizing of distribution networks and advertising in the other distributor's exclusive territory. Active approach includes visits to the buyer, direct and electronic mail, advertisements in the media or other promotions specifically targeted at these customers or customer group in the other distributor's exclusive territory.

(6) 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.

Excluded Restrictions

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 the contract products;
- c) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands 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 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 the purchases of the contract products and their substitutes on the relevant market the buyer made in the preceding financial year.

(3) By way of derogation from paragraph (1) item (a) hereof the non-compete obligation, the duration of which exceeds five years shall not be considered a 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) By way of derogation from paragraph (1) item (b) hereof, a non-compete obligation the duration of which is limited to one year after the termination of the agreement shall not constitute a vertical restraint, if:

(a) the obligation relates to products which compete with the contract products (substitutes);

(b) the obligation is limited to the premises and land from which the buyer has operated during the contract period;

(c) the obligation is indispensable to protect know-how transferred by the supplier to the buyer, 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 on the buyer 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, but provided that the know-how is secret, substantial and identified throughout the period after the termination of the agreement concerned.

(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 is not generally known or easily accessible. Substantial means that the know-how includes information which is indispensable for the buyer for the use, sale or resale of the contract products. 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 WITHDRAWAL OF BLOCK EXEMPTION AND INDIVIDUAL EXEMPTION

Conditions for Withdrawal of Block Exemption

Article 11

(1) Pursuant to Article 10 paragraph (4) of the Act, the Croatian Competition Agency (hereinafter: the Agency) may initiate *ex officio* proceedings for assessment of compatibility of a particular vertical agreement, regardless of the fact that it satisfies the conditions for block exemption granted under this Regulation, where this particular agreement, individually or in combination with agreements which have similar restrictive effects in the relevant market, as long as they are in force, cumulatively do not fulfil the conditions for block exemption laid down in Article 8 paragraph (3) of the Act.

(2) Within the meaning of paragraph (1) hereof the Agency may initiate the proceeding for the assessment of a particular vertical agreement particularly where:

- a) the access to the relevant market or competition therein is significantly restricted by the cumulative effect of vertical agreements which have similar vertical restraints;
- b) parallel networks of vertical agreements with similar vertical restraints together cover more than 50 % of the relevant market.

(2) Where the results of the assessment of an agreement within the meaning of paragraph (1) hereof prove that the agreement concerned produces effects contravening the

provisions of Article 8 paragraph (3) of the Act and this Regulation, the Agency shall by way of a decision withdraw the benefit granted by block exemption to this particular agreement.

Burden of Proof

Article 12

(1) Without prejudice from Article 11 hereof, the vertical agreements which satisfy the conditions for block exemption under this Regulation are, as a rule, assumed to be in compliance with the conditions laid down in Article 8 paragraph (3) of the Act.

(2) By way of derogation, in the case of vertical agreements which do not satisfy the conditions for block exemption provided under this Regulation, the participants to such agreements claiming the benefit of block exemption bear the burden of proving that the agreements they conclude nevertheless satisfy the conditions for block exemption from the general ban of restrictive agreements under Article 8 paragraph (3) of the Act.

(3) In the case where the Agency has initiated the formal assessment proceedings of the restrictive agreement under paragraph (2) hereof, the participating undertakings claiming the benefit of block exemption as laid down under Article 8 paragraph (3) of the Act must substantiate the efficiency claims of the vertical agreement concerned.

Application of this Regulation to Vertical Agreements in the Motor Vehicle Sector

Article 13

(1) This Regulation applies to vertical agreements on the sale of spare parts for motor vehicles and vertical agreements on the provision of repair and maintenance services for motor vehicles where these agreements are concluded after this Regulation enters into force, provided that such agreements fulfil the conditions for block exemption laid down by the Regulation on block exemption granted to agreements on distribution and servicing of motor vehicles.

(2) By way of derogation from paragraph (1) hereof, where vertical agreements on the sale of spare part for motor vehicles and vertical agreements on the provision of repair and maintenance services for motor vehicles have been concluded before this Regulation enters into force and which have been brought in compliance with the provisions of the Regulation on block granted to agreements on distribution and servicing of motor vehicles (Official Gazette, No 105/2004), the latter shall continue to apply as long as these agreements remain in force but until 31 May 2013 at the latest.

(3) As of 1 June 2013 all agreements referred to under paragraph (2) hereof must be brought in compliance with the provisions of paragraph (1) hereof.

(4) This Regulation shall apply as of 1 June 2013 also to vertical agreements on distribution of new motor vehicles.

(5) The Regulation on block granted to agreements on distribution and servicing of motor vehicles (Official Gazette, No 105/2004) shall apply to vertical agreements referred to under paragraph (4) hereof until 31 May 2013.

V TRANSITIONAL AND FINAL PROVISIONS

Article 14

(1) The Regulation on block exemption granted to certain categories of vertical agreements (Official Gazette, No 51/2004) shall continue to apply to vertical agreements which have been concluded and have fulfilled the conditions for block exemption hereunder as long as these agreements remain in force but not later than 31 January 2012.

(2) As of 1 February 2012 the agreements referred to under paragraph (2) hereof must be brought in compliance with the provisions of this Regulation.

Article 15

This Regulation, as of the day of entry into force, replaces the Regulation on block exemption granted to certain categories of vertical agreements (Official Gazette, No 51/2004).

Entry into Force

Article 16

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, 10 February 2011

Prime Minister
Jadranka Kosor