GOVERNMENT OF THE REPUBLIC OF CROATIA

Pursuant to Article 10 paragraph (2) item (2) of the Competition Act (Official Gazette, No 79/2009), the Government of the Republic of Croatia in its session held on 16 June 2011, adopted the following

REGULATION ON BLOCK EXEMPTION GRANTED TO CERTAIN CATEGORIES OF HORIZONTAL AGREEMENTS

I GENERAL PROVISIONS

Subject matter of the Regulation

Article 1

This Regulation stipulates conditions which the horizontal 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

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, concluded between two or more independent undertakings operating at the same level of the production or distribution chain (horizontal agreements), which regulate the conditions under which the parties to the agreement may purchase, sell or resell certain goods and/or services;
b) "horizontal restriction" means a restriction of competition contained in a horizontal agreement referred to in item (a) hereof which falls under 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 including intermediate goods and/or services and final goods and/or services;

f) "in specialization agreements" products do not include distribution and rental services;
g) "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;
h) "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 (Official Gazette, No 9/2011);
i) "relevant product market in specialization agreements" means the relevant product and geographic market to which the specialisation products belong, and, in addition, where the specialisation products are intermediary products which one or more of the parties fully or partly use for the production of downstream products, the relevant product and geographic market to which the downstream products belong;
j) "downstream product" means a product for which a specialization product is used by one or more of the parties as an input and which is sold by those parties on the market;
k) "relevant product market in research and development agreements" means the relevant market for the products capable of being improved, substituted or replaced by the contract products;
l) "relevant technology market in research and development agreements" means the relevant market for the technologies or processes capable of being improved, substituted or replaced by the contract technologies;
m) "competing undertaking" means an actual or potential competitor;
n) "actual competitor of a party to the specialization agreement" means an undertaking that is active on the same relevant market;
o) "actual competitor of a party to the research and development agreement" means an undertaking that is supplying a product, technology or process capable of being improved, substituted or replaced by the contract product or the contract technology on the relevant geographic market;
p) "potential competitor of a party to the specialization agreement" means an undertaking that, in the absence of the specialisation agreement, would, on realistic grounds and not just as a mere theoretical possibility, in case of a small but permanent increase in relative prices be likely to undertake, within not more than 3 years, the necessary additional investments or other necessary switching costs to enter the relevant market;
q) "potential competitor of a party to the research and development agreement" means an undertaking that, in the absence of the research and development agreement, would, on realistic grounds and not just as a mere theoretical possibility, in case of a small but permanent increase in relative prices be likely to undertake, within not more than 3 years, the necessary additional investments or other necessary switching costs to supply a product, technology or process capable of being improved, substituted or

replaced by the contract product or contract technology on the relevant geographic market;

r) "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 final customer or consumer;
s) "indirect customer" is an undertaking who is not a party to the horizontal agreement but he/she purchases contract goods and/or services from the customer party to the horizontal agreement;
t) "consumer" means a natural person who buys or uses the relevant product, or he/she may do so in a particular situation.

Applicability of the block exemption

Article 3

(1) Block exemption shall apply to horizontal agreements laid down in Article 10 paragraph (2) item (2) of the Act, entered into between two or more undertakings which operate on the same level of production or distribution chain, and particularly to:

a) research and development agreements;
b) specialization agreements.

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

(a) joint research and development of contract products or contract technologies and joint exploitation of the results of that research and development;
(b) joint exploitation of the results of research and development of contract products or contract technologies jointly carried out pursuant to a prior agreement between the same parties;
(c) joint research and development of contract products or contract technologies excluding joint exploitation of the results;
(d) paid-for research and development of contract products or contract technologies and joint exploitation of the results of that research and development;
(e) joint exploitation of the results of paid-for research and development of contract products or contract technologies pursuant to a prior agreement between the same parties, or
(f) paid-for research and development of contract products or contract technologies excluding joint exploitation of the results.

(3) Joint research and development referred in paragraph (2) hereof shall mean the activities carried out under a research and development agreement by a joint team, organisation or undertaking, activities jointly entrusted by the parties to the agreement to a third party or activities that have been allocated between the parties to the agreement by

way of specialisation in the context of research and development or exploitation of the results.
(4) Paid-for research and development within the meaning of pragraph (2) hereof shall mean research and development that is carried out by one party to the agreement and financed by another party to the agreement – a financing party. The party financing paid-for research and development shall not carry out any of the relevant research and development activities itself.

(5) The block exemption provided for in paragraph (2) hereof shall also apply to research and development agreements containing provisions which relate to the assignment or licensing of intellectual property rights to one or more of the parties to the agreement or to an entity the parties establish to carry out the joint research and development, paid-for research and development or joint exploitation, provided that those provisions do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation.

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

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

(7) The block exemption provided for in paragraph (6) hereof shall also apply to specialization agreements containing provisions which relate to the assignment or licensing of intellectual property rights to one or more of the parties to the agreement, provided that those provisions do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation.

(8) Intellectual property rights within the meaning of paragraphs (5) and (7) hereof include industrial property rights, copyright and neighbouring rights.

(9) Participating undertakings under paragraphs (2), (5), (6) and (7) hereof shall be considered undertakings parties to the agreement and their respective connected undertakings.

Inapplicability of block exemption

Article 4

Within the meaning of the general ban stipulated in Article 8 paragraph (1) the block exemption under this Regulation shall not apply to:

a) horizontal agreements which have not been brought into compliance with this Regulation;
b) horizontal agreements the subject matter of which falls within the scope of any other block exemption regulation pursuant to Article 10 paragraph (2) of the Act.

II CONDITIONS THAT HORIZONTAL AGEEMENTS MUST CONTAIN AND OTHER CONDITIONS FOR EXEMPTION

Conditions that research and development agreements must contain

Article 5

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

a) all the parties must have full access to the final results of the joint research and development or paid-for research and development, including any resulting intellectual property rights and know-how, for the purposes of further research and development and exploitation of the results of this research and development, as soon as they become available. Where the parties to the agreement limit their rights of exploitation in accordance with this Regulation, in particular where they specialise in the context of exploitation, access to the results for the purposes of exploitation may be limited accordingly. Moreover, research institutes, academic bodies, or undertakings which supply research and development as a commercial service without normally being active in the exploitation of results of the relevant research and development, may agree to confine their use of the results for the purposes of further research. The research and development agreement may foresee that the parties compensate each other for giving access to the results for the purposes of further research or exploitation, but the compensation must not be so high as to effectively impede such access;

b) where the research and development agreement covers only joint research and development or paid-for research and development the research and development agreement must stipulate that each party to the agreement must be granted access to any pre-existing know-how of the other undertakings, if this know-how is indispensable for the purposes of its exploitation of the results. The research and development agreement may foresee that the parties compensate each other for

giving access to their pre-existing know-how, but the compensation must not be so high as to effectively impede such access.

c) any joint exploitation may only pertain to results which are protected by intellectual property rights or constitute know-how, which substantially contribute to technical or economic progress, whereas these results are indispensable for the manufacture of the contract products or the application of the contract technologies;

d) undertakings charged with the manufacture of the contract products by way of specialisation must be required to fulfil orders for supplies of the contract products from the all other parties to the agreement, except where the research and development agreement also provides for joint distribution or where the parties to the agreement have agreed that only the party manufacturing the contract products may distribute them.

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

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

(4) Within the meaning of paragraph (1) item (d) hereof, specialisation in the context of exploitation means that the parties allocate between them individual tasks such as production or distribution, or impose restrictions upon each other regarding the exploitation of the results such as restrictions in relation to certain territories, customers or fields of use. This includes a scenario where only one party produces and distributes the contract products on the basis of an exclusive licence granted by the other parties to the agreement.

(5) Within the meaning of paragraph (1) item (a) hereof, specialisation in the context of research and development means that each of the parties is involved in the research and development activities covered by the research and development agreement and they divide the research and development work between them in any way that they consider most appropriate. This does not include paid-for research and development.

(6) Within the meaning of paragraph (1) items (b) and (c) and paragraphs (2) and (3) hereof, know-how means a package of non-patented practical information, resulting from experience and testing, which is secret, substantial and identified. In this context, "secret" means that the know-how package as a body, or in the precise configuration and assembly of its components is not generally known or easily accessible. "Substantial" means that the know-how includes information which is indispensable for the manufacture of the contract products or the application of the contract processes.

"Identified" means that the know-how is described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality.

(7) Within the meaning of paragraph (1) item (c) hereof, contract product means a product arising out of the joint research and development or manufactured or provided applying the contract technologies.
(8) Within the meaning of Article 5 hereof contract technology means a technology or process arising out of the joint research and development.

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

Article 6

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

(2) Where two or more of the parties are competing undertakings, the block exemption shall apply to research and development agreements for the period referred to in paragraph (1) of this Article provided that:

(a) in the case of research and development agreements referred to in Article 3 paragraph (2) items (a), (b) and (c) of this Regulation, where the combined market share of the parties to a research and development agreement does not exceed 25 % on the relevant product and technology markets;

(b) in the case of research and agreements referred to in Article 3 paragraph (2) items (d), (e) and (f) of this Regulation, where the combined market share of the parties to the agreement, including the financing party and all the parties to the agreement with which the financing party has entered into research and development agreements with regard to the same contract products or contract technologies, does not exceed 25 % on the relevant product and technology markets.

(3) After the end of the period referred to in paragraph (1) hereof, the block exemption shall continue to apply to research and development agreements as long as the combined market share of the parties does not exceed 25 % on the relevant product and technology markets.

(4) If the market share referred to in paragraph (2) hereof is at the time the research and development agreement is entered into not more than 25 % but subsequently rises above

that level without exceeding 30 %, the block exemption shall continue to apply to the research and development agreement for a period of two consecutive calendar years following the year in which the 25 % threshold was first exceeded.

(5) If the market share referred to in paragraph (2) hereof is at the time the research and development agreement is entered into not more than 25 % but subsequently rises above 30 %, the block exemption shall continue to apply for a period of one calendar year following the year in which the level of 30 % was first exceeded.

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

Calculation of the market share for research and development agreements

Article 7

(1) Within the meaning of Article 6 of this Regulation the market share of the participating undertakings to research and development agreements shall be calculated on the basis of the market sales value of contract products and technologies and their substitutes. If market sales value data are not available, estimates based on other reliable market information, including market sales volumes relating to the contract products and technologies and their substitutes, may be used to establish the market share of the parties.
(2) The market share under paragraph (1) hereof shall be calculated on the basis of data relating to the preceding calendar year to the year the agreement is entered into.
(3) The market share under paragraph (1) hereof shall be increased by the market share of the respective connected undertakings to the parties to the agreement realised as provided under paragraphs (1) and (2) hereof.

Conditions that specialization agreements must contain

Article 8

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

(a) the parties to the agreement accept an exclusive purchase and/or exclusive supply obligation, or

(b) the parties to the agreement do not sell the products which are the object of the specialization agreement independently but provide for joint distribution.
(2) Within the meaning of paragraph (1) item (a) hereof exclusive purchase obligation means an obligation to purchase the specialisation product only from a party to the agreement.
(3) Within the meaning of paragraph item (a) (1) hereof exclusive supply obligation means an obligation to supply the specialization product to the parties to the

specialization agreement in other words an obligation not to supply a competing undertaking other than a party to the agreement with the specialisation product.
(4) Within the meaning of paragraph (1) item (b) hereof joint distribution means that the parties to the specialization agreement:
(a) carry out the distribution of the specialization products by way of a joint team, organisation or undertaking; or
(b) appoint a third party distributor on an exclusive or non-exclusive basis, provided that the third party is not a competing undertaking to the parties to the specialization agreement.

Market share thresholds for specialisation agreements

Article 9

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

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

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

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

Calculation of the market share for specialisation agreements

Article 10

(1) Within the meaning of Article 9 of this Regulation the market share of the participating undertakings to specialisation agreements the market share shall be calculated on the basis of the market sales value of the contract products and their substitutes. If market sales value data are not available, estimates based on other reliable market information, including market sales volumes of the contract products and their substitutes in the relevant market, may be used to establish the market share of the parties.

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

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

III RESTRICTIONS OR CONDITIONS WHICH AGREEMENTS MAY NOT CONTAIN

Hard core restrictions within research and development agreements

Article 11

(1) The block exemption shall not apply to research and development agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

(a) the restriction of the freedom of the participating undertakings to carry out research and development independently or in cooperation with third parties in a field unconnected with that to which the research and development relates or, in a connected field;
(b) the limitation of output or sales;
(c) the fixing of prices when selling the contract product or licensing the contract technologies to third parties;
(d) the restriction of the territory in which, or of the customers to whom, the parties may passively sell the contract products or license the contract technologies;
(e) the requirement not to make any, or to limit, active sales of the contract products or contract technologies in territories or to customers which have not been exclusively allocated to one of the parties to the agreement by way of specialization, in the context of exploitation referred to in Article 5 paragraph (4) of this Regulation;
(f) the requirement to refuse to meet demand from customers in the parties' to the research and development agreements respective territories, or from customers otherwise allocated between the parties to the agreement concerned by way of specialisation in the context of exploitation, who would market the contract products in other territories outside the relevant market;
(g) the requirement to make it difficult for users or resellers to obtain the contract products from other resellers within the territory of the Republic of Croatia.

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

(a) the setting of production targets where the exploitation of the results includes the joint production of the contract products;

(b) the setting of sales targets where the joint exploitation of the results includes the joint distribution of the contract products or the joint licensing of the contract technologies, where "joint" means by a joint team, organisation or undertaking or where these activities are jointly entrusted by the parties to the agreement to a third party;
(c) the restriction of the freedom of the parties to the agreement to manufacture, sell, assign or license products, technologies or processes which compete with the contract products or contract technologies during the period for which the parties to the research and development agreement have agreed to jointly exploit the results.

(3) Within the meaning of paragraph (1) item (c) hereof, the provisions contained in research and development agreements relating to fixing of prices when selling the contract product or licensing the contract technologies to third parties shall not be considered as hard core restrictions where they relate to fixing of prices charged to immediate customers or the fixing of licence fees charged to immediate licensees where the joint exploitation of the results includes the joint distribution of the contract products or the joint licensing of the contract technologies, where "joint" means by a joint team, organisation or undertaking or where these activities are jointly entrusted by the parties to the agreement to a third party.
(4) Within the meaning of paragraph (1) item (d) hereof, the restriction of the territory in which, or of the customers to whom the parties may license the contract technologies, shall not be considered as a hard core restriction, provided that the results are exclusively licensed to another party to the agreement.
(5) Passive sales means sales in response to unsolicited requests from individual customers in other parties' exclusive territories, including delivery of products to such customers, to the extent that such responding is not the result of active sales operations. Sales generated by general advertising or promotion in the media or on the Internet that reaches customers in other parties' exclusive territories or customers in the respective territories, as a result of the development in the technology and since being easily accessible, are considered to be a reasonable method of approaching these customers.

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

Excluded restrictions

Article 12

The block exemption shall not apply to the following obligations contained in research and development agreements:

(a) the obligation not to challenge after completion of the research and development the validity of intellectual property rights which the parties hold and which are relevant to the research and development or, after the expiry of the research and development agreement, the validity of intellectual property rights which the parties hold and which protect the results of the research and development, without prejudice to the possibility to provide for termination of the research and development agreement in the event of one of the parties to the research and development agreement challenges the validity of such intellectual property rights;
(b) the obligation not to grant licences to third parties to manufacture the contract products or to apply the contract technologies unless the agreement provides for the exploitation of the results of the joint research and development or paid-for research and development by at least one of the parties and such exploitation takes place in the market vis-à-vis third parties.

Hard core restrictions within specialisation agreements

Article 13

(1) The block exemption shall not apply to specialisation agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, contain restrictions which have as their object:

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

(2) Within the meaning of paragraph (1) item (a) the provisions in the specialization agreements relating to the fixing of prices when selling the products to third parties shall not be considered as a hard core restriction where charged to immediate customers in the context of joint distribution within the meaning of Article 8 paragraph (4) of this Regulation.

(3) Within the meaning of paragraph (1) item (b) the provisions in the specialization agreements relating to the limitation of output or sales where the parties to the agreement agree on the amount of products in the context of unilateral or reciprocal specialisation agreements within the meaning of Article 3 paragraph (6) of this Regulation or the set the capacity and production volume in the context of a joint production agreement referred to in Article 3 paragraph (6) of this Regulation, as well as the provisions on the basis of which the parties to the agreement set the sales targets in the context of joint distribution within the meaning of Article 8 paragraph (4) of this Regulation.

(4) Production within the meaning paragraph (4) hereof means the manufacture of goods or the preparation of services and includes production by way of subcontracting.
(5) Preparation of services within the meaning of paragraph (4) hereof means activities upstream of the provision of services to customers.

IV WITHDRAWAL OF BLOCK EXEMPTION

Conditions for withdrawal of block exemption

Article 14

(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 horizontal 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) 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 15

(1) Without prejudice from Article 14 hereof, the horizontal 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 horizontal 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 horizontal agreement concerned.

V TRANSITIONAL AND FINAL PROVISIONS

Article 16

(1) For horizontal agreements which have been concluded before this Regulation enters into force, and which satisfy the conditions for block exemption under the Regulation on

block exemption granted to certain categories of horizontal agreements concluded between undertakings operating at the same level of production or distribution chain (Official Gazette, No 158/2004), the later continues to apply as long as these agreements remain in force but until 30 June 2013 at the latest.

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

Article 17

This Regulation, as of the day of entry into force, replaces the Regulation on block exemption granted to certain categories of horizontal agreements concluded between undertakings operating at the same level of production or distribution chain published in the Official Gazette, No 158/2004.

Entry into force

Article 18

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, 16 June 2011

Prime Minister
Jadranka Kosor