

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

**REGULATION
ON AGREEMENTS OF MINOR IMPORTANCE**

October, 2005

Pursuant to Article 8, paragraph (3) and Article 25, paragraph (1), item (a) of the Act on Competition (Official Gazette, No 48/2005), the Competition Council, in its session held on 4 October 2005, has adopted the following

REGULATION ON AGREEMENTS OF MINOR IMPORTANCE

Article 1

Subject Matter of the Regulation

This Regulation shall define the agreements of minor importance as permitted forms of cooperation between undertakings, whose effects have insignificant influence on the infringements of the Act on Competition (hereinafter in the text: the Act), the conditions that agreements of minor importance must fulfill and restrictions that such agreements may not contain.

Article 2

Definition of Agreements of Minor Importance

An agreement shall be deemed to be an agreement of minor importance where the joint market share of parties to the agreement and their controlled undertakings in the relevant market concerned is insignificant, provided that such agreement has no provisions which, in spite of insignificant market share, prevent, restrict or distort competition.

Article 3

Insignificant Market Share

Pursuant to Article 2 of this Regulation, an insignificant market share shall be considered to be:

- a) the aggregate market share of 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 which are actual or potential market competitors on any of those relevant markets (hereinafter in the text: competing undertakings),
- b) the market share of each 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 which are not actual or potential competitors on any of those relevant markets (hereinafter in the text: non-competing undertakings),
- c) the market share of any of the parties to the agreement or their controlled undertakings that does not exceed ten per cent (10%) on the relevant market affected by the agreement, in cases where it is not possible to determine whether the agreement is concluded between competing undertakings or between non-competing undertakings.

Article 4
Market Share Relating to Parallel Network of Agreements

In cases where competition on the relevant market is restricted or infringed by the cumulative effect of agreements on the sale of products or services (hereinafter in the text: products) concluded between different suppliers or distributors, that is to say, in a cases where parallel networks of agreements have similar effects on the market, the insignificant market share of each of the parties to the agreement or their controlled undertakings, as defined by Article 3 of this Regulation, shall be deemed a market share of up to five per cent (5%), for agreements concluded between competing undertakings and for agreements concluded between non-competing undertakings.

If the relevant market is covered by parallel network of agreements which market share is less than thirty per cent (30%), it means that a cumulative effect of a parallel network of agreements does not restrict or distort market competition.

Article 5
Permitted Increase of Market Share

It shall be assumed that agreements do not prevent, restrict or distort market competition, if the market shares of the parties to the agreement and their associated undertakings, as defined by Articles 3 and 4 of this Regulation do not exceed by more than two per cent (2%) during two successive calendar years.

Article 6
Hard Core Restrictions

Although having the insignificant market share pursuant to Articles 3 and 4 of this Regulation, the agreements between parties and their connected undertakings which have as their object the prevention, restriction or distortion of market competition pursuant to Articles 7 and 8 of this Regulation shall not be deemed to be the agreements of minor importance.

Article 7
***Hard Core Restrictions in the Agreements between Competitors
(Horizontal Agreements)***

Hardcore restrictions of the market competition in agreements concluded between competing undertakings which may not be defined as agreements of minor importance though fulfilling the conditions set out in Articles 2 and 3, paragraph (1), item a) of this Regulation, are considered as restrictions which directly or indirectly, solely or in combination with other undertakings controlled by the parties to the agreement have as their object:

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

Article 8
Hard Core Restrictions in the Agreements between Non-Competitors
(Vertical Agreements)

Hard core restrictions of the market competition in agreements concluded between non-competing undertakings which may not be defined as agreements of minor importance, though fulfilling the conditions pursuant to Articles 2 and 3, paragraph (1), items b) and c) hereof, are considered as restrictions which directly or indirectly, solely or in combination with other undertakings controlled by the parties to the agreement have as their object:

- a) the restriction of the buyer's ability to determine its sale price, irrespective of the supplier's ability to impose a maximum sale price or recommend a sale price, provided that the prices are not amount to a fixed or minimum sale price that are 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 the customers to whom the buyer may sell the contract products, except for the following cases:
 - active sales into the exclusively allocated territory or to an exclusively allocated customer group reserved to the supplier, that is to say which are allocated by the supplier to another buyer, provided that such a restriction does not disable further sales by indirect buyer;
 - sales to end users by a buyer operating at the wholesale level of trade;
 - sales of products imposed to unauthorized distributors by the members of a selective distribution system;
 - the buyer's ability to sell components, supplied for purposes of implementation, to other customers who would use them to produce the same type of products as those produced by the supplier.
- 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, not excluding the possibility of prohibiting a member of the distribution system from operating through unauthorized undertaking.
- d) the restriction of cross- supplies of products between distributors within a selective distribution system, including the distributions between distributors operating at different levels of trade;
- e) the restriction agreed between a supplier of components and a buyer who implements 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.

Article 9
Active and Passive Sales

Active sales pursuant to Article 8 of this Regulation means sales made by active searching or accessing to particular customers group inside another distributor's exclusive territory, conclusion of individual agreements or taking measures to present the products to those customers, and establishing, branches, warehouses or organizing of distribution networks and advertising in another distributor's exclusive territory. Active access includes visits, direct and electronic mail, advertising in the media or other promotions in

media specifically targeted at that customers group or customers in another distributor's exclusive territory.

Passive sales pursuant to Article 8 of this Regulation means response to requests of individual customers, including the delivery of products to such customers, to the extent that such responding must not be the result of active sales operations. Passive sales is general advertising or promotion in the media or on the internet that reaches customers in other distributors' exclusive territories or customers groups, as a result of the technological development and easy access, and therefore it is deemed to be a reasonable method of approaching the customers or groups of customers.

Article 10

Compliance of concluded agreement with this Regulation

All agreements with insignificant market shares as defined by the provisions of this Regulation, which have been concluded before this Regulation enters into force, must be brought in compliance with this Regulation within the time period of six (6) months as of the day of its entry into force.

Article 11

Entry into Force

This Regulation shall enter into force on the eighth day following the day of publication in the Official Gazette of Bosnia and Herzegovina and shall be published in Official Gazettes of Entities and Brčko District of Bosnia and Herzegovina.

C.C. No. 01-01-26-506/05

**04 October 2005
Sarajevo**

President

**Council of Competition
Sena Hatibović**