

**REGULATION ON AGREEMENTS OF MINOR
IMPORTANCE**

-CONSOLIDATED TEXT-

„Official Gazette of BiH“, No. 86/05 and 34/10

Pursuant to Article 8, paragraph (3) and Article 25, paragraph (1), item (a) of the Act on Competition ("Official Gazette of BiH", No. 48/05, 76/07 and 80/09), the Competition Council, in its 18th session held on 4 October 2005, has adopted

REGULATION ON AGREEMENTS OF MINOR IMPORTANCE

(Consolidated text)

Article 1

(Subject Matter)

This Regulation defines the agreements of minor importance as permitted forms of cooperation between undertakings, whose effects do not substantially limit the competition in terms of Article 4 of the Competition Act.

Article 2

(Definition of Agreements of Minor Importance)

An agreement shall be deemed to be an agreement of minor importance if the aggregate market share of parties to the agreement and their controlled undertakings in the relevant market is insignificant, except for hard core restrictions.

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, which does not exceed ten per cent (10%) on any of the relevant markets affected by the agreement, where the agreement is made between undertakings which are actual or potential competitors on any of these relevant markets (hereinafter : competitors),
- b) the aggregate 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 made between undertakings which are not actual or potential competitors on the relevant market concerned (hereinafter: non-competitors),
- c) the market share of each 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 difficult to classify the agreement as either an agreement between competitors or an agreement between non-competitors.

Article 4

(Market Share Relating to Parallel Agreement Network)

- (1) In cases where competition on the relevant market is restricted or distorted by the cumulative effect of agreements for the sale of products or services (hereinafter: products) made by different suppliers or distributors, i.e. in the cases of parallel networks of agreements having 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, is considered to be a market share of up to five per cent (5%), both for agreements between actual or potential competitors and for agreements between non-competitors.
- (2) If the relevant market is covered by parallel agreement network, with the market share less than 30% (thirty), it is considered that cumulative effect of that parallel agreement network does not limit or distort the competition.

Article 5

(Permitted Increase of Market Share)

It is assumed that agreements do not prevent, restrict or distort 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 increase during two successive calendar years by more than two per cent (2%).

Article 6

(Hard Core Restrictions)

Although having the insignificant market share pursuant to Articles 3 and 4 of this Regulation, an agreement between parties to the agreement and their associated undertakings aiming at the prevention, restriction or distortion of competition pursuant to Articles 7 and 8 of this Regulation, shall not be deemed to be the agreement of minor importance

Article 7

(Hard Core Restrictions in the Agreements between Competitors - Horizontal Agreements)

Hard core restrictions in agreements made between competitors and which can 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 restrictions which

directly or indirectly, solely or in combination with other undertakings controlled by the parties to the agreement, are aimed to:

- a) fix prices when selling the products to third parties;
- a) limit output or sales;
- b) allocate markets or customers.

Article 8

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

Hard core restrictions in agreements made between non-competitors and which can 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 restrictions which directly or indirectly, solely or in combination with other undertakings controlled by the parties to the agreement, are aimed to:

- a) limit a buyer's ability to determine its sale price, irrespective of the supplier's possibility 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;
- b) restrict the territory where the buyer may sell products from the agreement or restrict the sale of contracted products to a certain group of consumers, except for the following cases:
 - active sales on the exclusively allocated territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, provided that such a restriction does not disable further sales of the product by indirect buyer;
 - sales to end users by a buyer operating at the wholesale level of trade;
 - sales to unauthorized distributors imposed by the members of a selective distribution system;
 - possibility of a buyer to sell components, supplied for the purposes of embedding, to other customers who would use them to manufacture the same type of products as those produced by the supplier.
- c) restrict active or passive selling to end- users by members of a selective distribution network operating at the retail level of trade, not excluding the possibility of prohibition to a member of the distribution network to sell using unauthorized undertaking;
- d) restrict mutual supply of products between distributors within a selective distribution system, including the distributions between distributors operating at different level of trade;
- e) restrict, by agreement between a supplier of components and a buyer who incorporates those components, the supplier's ability to sell the components as spare parts to end- users or to independent repairers or other service providers not entrusted by the buyer with the repair or servicing of its products.

Article 9
(Active and Passive Sales)

- (1) Active sale, in terms of Article 8 of this Regulation, means active search and approach to customers or a certain group of customers on a certain territory of another distributor, by making individual agreements and undertaking measures of offering the products to those customers; establishing subsidiaries, warehouses or organizing distributive network and promotional activities on the exclusive territory of another distributor. Active approach includes visiting and sending post to customers, including electronic mail, advertising on media and other means of public informing targeted on the customers or groups of customers on the exclusive territory of another distributor.

- (2) Passive sale, in terms of Article 8 of this Regulation, means response to requirements of individual customers, including delivery of products to such customers, to the extent that such responding is not the result of active sales operations. 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 simplicity of the access and is deemed to be a reasonable method of approach to the customers or groups of customers shall be considered as passive sales.

Article 10
(Compliance of concluded agreements with this Regulation)

All agreements of minor importance as defined by this Regulation, which have been concluded before this Regulation enters into force, must be complied 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.

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**President of
Council of Competition**

Sarajevo, 30th November 2005

Sena Hatibović