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БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

**REGULATION ON BLOCK EXEMPTION GRANTED TO CERTAIN CATEGORIES
OF HORIZONTAL AGREEMENTS (BETWEEN UNDERTAKINGS OPERATING
AT THE SAME LEVEL OF PRODUCTION OR DISTRIBUTION CHAIN)
RELATING PARTICULARLY TO RESEARCH, DEVELOPMENT AND
SPECIALIZATION AGREEMENTS**

Sarajevo
December, 2005

Pursuant to Article 7, paragraph (1), item a) and Article 25, paragraph (1), item a) of the Act on Competition («Official Gazette of BH» No. 48/05), the Council of Competition in its 20th (twentieth) session, held in 27 December 2005, has adopted the following

**REGULATION ON BLOCK EXEMPTIONS GRANTED TO CERTAIN
CATEGORIES OF HORIZONTAL AGREEMENTS
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PRODUCTION OR DISTRIBUTION CHAIN)
RELATING PARTICULARLY TO RESEARCH, DEVELOPMENT AND
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I. GENERAL PROVISIONS

Article 1

Subject matter of the Regulation

This Regulation shall stipulate the conditions for block exemptions granted to certain categories of horizontal agreements, i.e. agreements between undertakings which operate at the same level of production or distribution chain (hereinafter: horizontal agreements) relating particularly to research, development and specialization agreements, set out the restrictions and conditions which such agreements may not contain, and other conditions which must be fulfilled in order to satisfy the conditions for exemption from application of the provisions on prohibited agreements set out in Article 4. of the Competition Act (hereinafter: the Act).

Article 2.

Applicability of block exemptions

- (1) Block exemption shall apply to horizontal agreements entered into between two or more independent undertakings which for the purpose of the agreement operate at the same level of production or distribution chain, and particularly to:
 - a) research and development agreements;
 - b) specialization agreements.
- (2) Research and development agreement from paragraph (1), item a) of this Article is a horizontal agreement entered into between two or more independent undertakings which relates to the conditions under which those undertakings pursue:
 - a) joint research and development of products or processes and joint exploitation of the results of those researches and developments; or
 - b) joint exploitation of the results of research and development of products or processes jointly carried out pursuant to a prior agreement between the same undertakings; or
 - c) joint research and development of products or processes which excludes joint exploitation of the results of those researches and developments.
- (3) The block exemption granted to research and development agreements provided for in paragraph (1), item a) of this Article shall also apply to provisions contained in those agreements which do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation, such as obligations not to carry out, independently or together with third parties, research and development in the field to which the agreement relates or in a closely connected field during the execution of the agreement.
- (4) Specialization agreement from paragraph (1), item b) of this Article is horizontal agreement entered into between two or more independent undertakings which sets the

conditions under which those undertakings specialize in the production of products, and such agreements shall be considered:

- a) unilateral specialization 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 deliver those products; or
 - b) mutual (reciprocal) specialization 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 those products from the other parties to the agreement who deliver those products; or
 - c) joint production agreements, by virtue of which two or more parties to the agreement agree to produce certain products jointly.
- (5) The block exemption granted to specialization agreements provided for in paragraph (1), item b) of this Article shall also apply to provisions contained in those agreements, which do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation, such as provisions concerning the assignment or use of intellectual property rights.
- (6) Intellectual property rights within the meaning of paragraph (5) of this Article include industrial property rights, copyright and neighbouring rights.
- (7) Participating undertakings under paragraphs (1) and (2) of this Article are undertakings that are parties to the agreement and undertakings that are connected to them.
- (8) Competing undertaking under paragraph (4), item a) of this Article means an undertaking that is active at the same relevant market as an actual competitor or a potential competitor, that is to say an undertaking that would, on realistic grounds, undertake the necessary additional investments or other necessary switching cost structures so that it could enter the relevant market in response to a small but permanent increase in prices.

Article 3.

Inapplicability of block exemptions

According to the stipulations of this Regulation, the block exemption shall not apply to:

- a) Horizontal agreements which do not fulfill the cumulative conditions laid down under Article 4., paragraph (3) of the Act and which are not brought into compliance with this Regulation;
- b) Horizontal agreements which fall within the scope of other regulations pursuant to the provisions under Article 7. of the Act.

II. CONDITIONS THAT AGREEMENT MUST CONTAIN AND OTHER CONDITIONS WHICH MUST BE MET

Article 4.

Conditions that research and development agreements must contain

- (1) The block exemption for research and development agreements provided for in Article 2., paragraph (1), item a) of this Regulation shall apply if the following conditions are met:
 - a) All participants must have access to the results of the joint research and development for the purpose of further research or exploitation of results. Exceptionally, research institutes, academic bodies or undertakings which supply research and development as a commercial service without normally being active in the exploitation of results may agree to confine their use of the results for the purpose of further research.

- b) Each party must be free independently to exploit the results of the joint research and development and any pre-selected know-how necessary for the purpose of such exploitation, when a research and development agreement ensures only joint research and development. Such right to exploitation may be limited to one or more technical fields of application, when the parties are not competing undertakings at the time the research and development agreement is concluded.
 - c) Any joint exploitation of rights must relate to results which are protected by intellectual property rights or constitute know-how, which substantially contribute to technical or economic progress, and those results must be decisive for the manufacture of the contract products or the application of the contract processes.
 - d) Undertakings charged with manufacture by way of specialization in production must fulfill orders for supplies from all parties to the agreement, except when the research and development agreements also provide for joint distribution.
- (2) Within the meaning of paragraph (1), item b) of this Article, research and development means the acquisition of know-how relating to products or processes and the carry out the theoretical analysis, systematic studies or experimentations, including experimental production, technical testing of products or processes, and the establishment of the necessary facilities and the acquisition of intellectual property right for the results.
 - (3) Within the meaning of paragraph (1), item c) of this Article, the exploitation of results means the production or distribution of the contract products or the application of the contract processes or the assignment or licensing of intellectual property rights or the transfer of know-how required for such manufacture of the contract products or application of contract processes.
 - (4) Within the meaning of paragraphs (2) and (3) of this Article, research and development or exploitation of the research and development results are carried out jointly when the work involved is carried out by a joint team, organization or undertaking, or jointly entrusted to a third party, or allocated between the parties to the agreement by way of specialization in research, development, production or distribution.
 - (5) Within the meaning of paragraph (1), items b) and c), and paragraphs (3) and (4) of this Article, 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 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 data and information which are indispensable for the manufacture of the contract products or the application of the contract processes. «Identified» means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfills the criteria of secrecy and substantiality.
 - (6) Within the meaning of paragraph (1), item c) of this Article, contract product means a product which is the subject to the agreement arising out of the joint research and development or manufactured or provided applying the contract processes.
 - (7) Within the meaning of paragraph (1), item c) and paragraph (6) of this Article, contract process means a technology or process arising out of the joint research and development.

Article 5.

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

- (1) When the participating undertakings are not competing undertakings, the block exemptions for research and development agreements provided for in Article 2, paragraph (2) of this Regulation shall apply for the duration of the research and development. When

the results are jointly exploited, the exemption shall continue to apply for seven years from the time the contract products are first put on the relevant market.

- (2) When two or more of the participating undertakings are competing undertakings, the block exemption for research and development agreements shall apply for the period referred to in paragraph (1) of this Article, if, at the time when the research and development agreement is entered into, the combined market share of the participating undertakings does not exceed twenty five per cent (25%) of the relevant market for the products capable of being improved or that are substitutes for the contract products.
- (3) After the period referred to in paragraph (1) of this Article is ended, the block exemption shall continue to apply as long as the combined market share of the participating undertakings does not exceed 25% of the relevant market for the contract products.
- (4) If the market share referred to in paragraph (2) of this Article is, on the moment of signing the agreement, not more than 25% but subsequently rises above this level without exceeding 30%, the block exemption shall continue to apply for a period of two consecutive calendar years following the year in which the 25% of the market share is first exceeded.
- (5) If the market share referred to in paragraph (2) of this Article is, on the moment of signing the agreement, not more than 25% but subsequently rises above 30%, the block exemption shall continue to apply for one calendar year following the year in which the level 30% of the market share is first exceeded.
- (6) The benefit of block exemption within the meaning of paragraphs (4) and (5) of this Article may not be combined so as to exceed a period of two years.

Article 6.

Calculation of the market share for research and development agreements

- (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 sales value of the contract products and their substitutes in the market. If the sales value data of the contract products and their substitutes in the market are not available, estimates based on other reliable market information, including the sales volume of the contract products and their substitutes in the relevant market may be used to establish the market share of the undertaking concerned.
- (2) The market share under paragraph (1) of this Article shall be calculated on the basis of data relating to calendar year preceding the conclusion of the agreement.
- (3) The market share under paragraph (1) of this Article shall be increased by the market share of the undertakings connected to the parties to the agreement realized as provided for under paragraphs (1) and (2) of this Article.

Article 7.

Conditions that specialization agreements must contain

- (1) The block exemption for specialization agreements provided for in Article 2., paragraph (4) of this Regulation shall apply when:
 - a) the parties to the agreement accept an exclusive purchase and/or exclusive supply obligation in the context of an unilateral or reciprocal specialization agreement or a joint production agreement; or

- b) the parties to the agreement do not sell independently the products which are the object of the specialization agreement but they take part in joint distribution or agree to appoint a third party to be distributor on an exclusive or non-exclusive basis in the context of a joint production agreement provided that the third party is not a competing undertaking.
- (2) Within the meaning of paragraph (1) of this Article production means the manufacture of goods or the provision of services, and includes production by way of cooperatives-subcontractors.
- (3) Within the meaning of paragraph (1) of this Article exclusive distribution obligation means an obligation to supply exclusively the contract products relating to specialization agreement to parties to the agreement, i.e. such obligation excludes the possibility of supplying its competing undertaking.
- (4) Within the meaning of paragraph (1) of this Article exclusive purchase obligation means an obligation to purchase the products to which the specialization agreements relate only from the party to the agreement which agrees to supply those products.

Article 8.

Market share for specialization agreements

- (1) The block exemption for specialization agreements provided for in Article 2., paragraph (4) of this Regulation, shall apply on condition that the combined market share of the participating undertakings does not exceed 20% on the relevant market.
- (2) If the market share of the participating undertakings is, on the moment of signing the agreement, not more than 20% but subsequently rises above that level without exceeding 25%, the block exemption shall continue to apply for a period of two consecutive calendar years following the year in which 20% of the market share is first exceeded.
- (3) If the market share of the participating undertakings is, on the moment of signing the agreement, not more than 20% but subsequently rises above 25%, the block exemption shall continue to apply for one calendar year following the year in which the level of 25% market share is first exceeded.
- (4) The benefit of block exemption within the meaning of paragraphs (2) and (3) of this Article may not be combined so as to exceed a period of two calendar years.

Article 9.

Calculation of the market share for specialization agreements

- (1) Within the meaning of the Article 8. of this Regulation the market share of the participating undertakings to specialization agreements shall be calculated on the basis of the sales value of the contract products and their substitutes in the market . If the sales value data of the contract products and their substitutes in the market 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 undertakings concerned.
- (2) The market share under paragraph (1) of this Article shall be calculated on the basis of data relating to the calendar year preceding the signing of the agreement.

- (3) The market share under paragraph (1) of this Article shall be increased by the market share of the undertakings connected to the parties to the agreement realized as provided for under paragraphs (1) and (2) of this Article.

III. RESTRICTINS OR CONDITIONS WHICH AGREEMENTS MAY NOT CONTAIN

Article 10.

Hard core restrictions within research and development agreements

- (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 to the agreement, 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 not connected with the field to which the research and development relates or in the neighboring field;
 - b) the prohibition to deny the validity of intellectual property rights which are relevant to the research and development when the research and development is completed ,or, the validity of intellectual property rights which protect the results of the research and development, when the research and development agreement expired, without prejudice to the possibility to provide for the termination of the research and development agreement in the case when one of the party to the agreement denies the validity of such intellectual property rights;
 - c) limitation of the manufacture or sale;
 - d) fixing prices when selling the contract product to third parties;
 - e) the restriction of the customers to whom the participating undertakings may sell the contract products, when the period of seven years ends, starting from the time the contract products are first put on the market;
 - f) the prohibition to make passive sale of the contract products in territories reserved for other parties to the agreement;
 - g) the prohibition to put the contract products on the market or to pursue an active sales policy of those products in territories reserved for other parties, when the period of seven years ends, starting from the time the contract products are first put on the market;
 - h) setting the conditions under which the third parties shall not be granted the licenses to manufacture the contract products or to apply the contract processes, if the exploitation of the result of the joint research and development by at least one of the party to the agreement is not provided for or does not take place;
 - i) setting the conditions under which the demand from users or sellers in their respective territories shall be refused, if they sell the contract products in other territories; or
 - j) setting of conditions under which it is difficult for the users or sellers to obtain the contract products from other sellers and in particular, to exercise intellectual property rights, or taking measures so as to prevent users or sellers from obtaining, or from putting on the market, the products which have been lawfully put on the market by another party to the agreement or within its consent.
- (2) Within the meaning of paragraph(1) of this Article, the following provisions contained in research and development agreements shall not be considered as prohibited competition restrictions:
- a) setting of production targets in a case when the exploitation of the results includes the joint production of the contract products;

- b) setting of sales targets and fixing of prices charged to immediate customers when the exploitation of the results includes the joint distribution of the contract products.
- (3) Passive sales within the meaning of paragraph (1), item f) of this Article shall mean sales in response to requests from individual customers in other parties' exclusive territories, including delivery of products to such customers, but such responding must not be the result of active sales operations. Passive sales means also the general advertising or promotion in the media or on the Internet that reaches customers in other parties' exclusive territories and customers in the respective territories, which is a result of the development in the technology and easy access, and therefore it is considered to be a reasonable method of approaching these customers.
- (4) Active sales within the meaning of paragraph (1), item g) of this Article shall mean sales made by actively searching for or approaching individual customers or particular customers group inside another parties' exclusive territory, conclusion of individual agreements, taking measures of general presentation of products to those customers, establishing branches, warehouses or organizing of distribution networks and promotions in that territory. Active approach includes visits, direct and electronic mail to customers, advertisement in the media or other promotions, specifically targeted at those customers or customers group in the other parties' exclusive territory.

Article 11.

Hard core restrictions with specialization agreements

- (1) The block exemption shall not apply to specialization agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties to the agreement, have restrictions with the aim of:
 - a) fixing prices when selling the products to third parties;
 - b) limitation of manufacture or sales; or
 - c) allocation of markets or customers.
- (2) Within the meaning of paragraph (1) of this Article the following provisions contained in specialization agreements shall not be considered as prohibited competition restrictions:
 - a) Provisions on the agreed amount of products in the context of unilateral or reciprocal specialization agreements or setting of the capacity and production volume of joint production (joint venture) in the context of a joint production agreement; and
 - b) The setting of sales targets and the fixing of prices that a production joint venture charges to its immediate customers in the context of Article 7., paragraph (1), item b) of this Regulation.

IV. WITHDRAWAL OF BLOCK EXEMPTIONS AND INDIVIDUAL EXEMPTION

Article 12.

Conditions for withdrawal of block exemptions

- (1) Pursuant to Article 7., paragraph (4) of the Act the Council of Competition may ex-officio initiate the proceedings for assessment of compatibility of a particular agreement under Article 2. of this Regulation with the provisions laid down in Article 4., paragraph (3) of the Act and this Regulation, if such agreements have effects in the relevant market which do not fulfill the conditions for block exemption.

- (2) Within the meaning of paragraph (1) of this Article the Council of Competition may initiate the proceedings for assessment of a research and development agreement, in particular when:
- a) the existence of the research and development agreement substantially restricts the scope for third parties to carry out research and development on the particular field because of the limited research capacity available elsewhere;
 - b) the existence of the research and development agreement, because of the particular structure of supply, substantially restricts the access of third parties to the market for contract products;
 - c) without objectively valid reason, the parties to the agreement do not exploit the results of the joint research and development;
 - d) the contract products are not subject to effective market competition from identical products or products considered by users as substitutes in view of their characteristics, price, intended use and customs of the customers ;
 - e) the existence of the research and development agreement can prevent, restrict or distort the effective market competition in research and development on a particular market.
- (3) Within the meaning of paragraph (1) of this Article the Council of Competition may initiate the proceedings for assessment of specialization agreements , in particular when:
- a) the agreement is not yielding significant results in terms of rationalization or the consumers are not receiving a fair share of the resulting benefits, or
 - b) the products which are the subject of the specialization are not subject to the effective market competition in relation to identical products or products considered by users to be substitutes in a view of their characteristics, price, intended use and customs of the customers .
- (4) If the Council of Competition, in the course of assessment procedure on compliance of an agreement with the provisions of the Act and this Regulation, proves that there are no grounds for the applicability of block exemption, it shall by means of a decision withdraw the application of block exemption granted to a particular agreement.

Article 13.
Individual exemption

Pursuant to Article 5. of the Act the undertakings- parties to the horizontal agreement may submit to the Council of Competition a request for individual exemption, if the agreement concerned does not fall under applicability of block exemption within the meaning of this Regulation, or if it, by its nature, does not fall under any other regulation within the meaning of Article 3., item b) of this Regulation.

Article 14.
Non-compulsory notification

The parties to the horizontal agreement that satisfy the conditions of block exemption laid down in this Regulation, within the meaning of Article 7., paragraph (3) of the Act, are not obliged to submitted such agreements to the Council of Competition for assessment with respect to individual exemption.

V. TRANSITIONAL AND FINAL PROVISIONS

Article 15.

- (1) Horizontal agreements, under Article 2. of this Regulation, concluded before this Regulation enters into force, must be brought in compliance with the provisions of this Regulation by December 31, 2006.
- (2) As regards the horizontal agreements concluded before this Regulation enters into force, on condition that they are brought in compliance with the provisions of this Regulation within the time period set out under paragraph (1) of this Article, the market share, excluding Article 6., paragraph (2) and Article 9., paragraph (2) of this Regulation, shall be calculated on the basis of the market sales data relating to the calendar year preceding the year this Regulation enters into force.

Article 16.

Entry into force

This Regulation shall enter into force on the eight day of its publication in the «Official Gazette of Bosnia and Herzegovina», and it will be published in official gazettes of Entities and Brčko District.

C.C., Number: 01-01-26-627/05

Sarajevo, December 30, 2005

President

Council of Competition

Sena Hatibović