

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

**REGULATION ON BLOCK EXEMPTION GRANTED TO CERTAIN
CATEGORIES OF VERTICAL AGREEMENTS
(BETWEEN UNDERTAKINGS OPERATING AT THE DIFEFRENT LEVELS OF
PRODUCTION OR DISTRIBUTION)**

Sarajevo, January, 2006

Pursuant to Article 25., paragraph (1), item a) and Article 7., paragraph (2) of the Act on Competition («Official Gazette BH», No.48/05), the Council of Competition on its 22nd (twenty second) session held on 24th January, 2006 has passed

**REGULATION ON BLOCK EXEMPTION GRANTED TO CERTAIN
CATEGORIES OF VERTICAL AGREEMENTS
(BETWEEN UNDERTAKINGS OPERATING AT THE DIFFERENT LEVELS OF
PRODUCTION OR DISTRIBUTION)**

I.

Article 1.

Subject –matter of the Regulation

This Regulation shall stipulate the conditions for block exemption granted to certain categories of agreements between undertakings which operate at the different levels of production or distribution (hereinafter: vertical agreements), restrictions or conditions which may be and must be contained herein and other conditions in a line with the provisions of Article 7. of the Competition Act (hereinafter:the Act).

Article 2.

Definition

Vertical agreements include those agreements or a joint venture between two or more undertakings which operate at the different levels of production or distribution chain, relating to the conditions under which the undertakings may purchase, sell or resell particular products or services.

Article 3.

Vertical agreements for block exemption

Block exemption shall apply to vertical agreements laid down in Article 7., paragraph (1), item b) of the Act, and particularly to:

- (1) ***Exclusive distribution agreements*** - where the supplier undertakes to limit the sale of contract products and/or services to only one selected distributor in a particular territory or to a particular group of customers which is exclusively allocated to that distributor.
- (2) ***Selective distribution agreements*** - 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 the distributors undertake not to sell such products to unauthorized distributors.
- (3) ***Exclusive purchase agreements*** - where the buyer undertakes to purchase the contract products only from one particular supplier.
- (4) ***Exclusive supply agreements*** - where the supplier undertakes to sell the contract products, either directly or indirectly, only to one buyer in the territory of the Bosnia and Herzegovina for the purpose of a specific use or for resale.
- (5) ***Franchise agreements*** - where one undertaking (franchisor) provides the other party (franchisee), in return for a direct or indirect finance reimbursement, with the right to use the franchise, i.e. the package of intellectual or industrial property rights for manufacture and /or sale purposes of particular products or provision of services. Intellectual or

industrial property rights package relates to a trade name and trade mark or signs, know-how, models, designs, copyright, technology knowledge or patents which shall be used for further sale of contract products or services to end users.

Franchise agreements are not applied on industrial (technology) franchise agreements relating to manufacture of products or technological process in the manufacture of such products.

- (6) *Agreements* containing provisions which relate to the assignment of intellectual property rights to the buyer or exercise of those rights by the buyer, provided that those provisions do not constitute the primary object of such agreements and that they are directly related to the use, sale or resale of contract products or services by the buyer or its customers.

Article 4.

Applicability of the block exemptions

Block exemption shall apply to vertical agreements laid down in Article 3. of this Regulation if they satisfy all requirements laid down in Article 4., paragraph (3) of the Act.

Article 5.

Total Annual Income

The block exemption within the meaning of Articles 3 and 4 of this Regulation shall apply to vertical agreements entered into between an association of undertakings and its members, or between such association and its suppliers, exclusively if all members of such association are practicing retail sale and if no individual member of such association together with its connected undertakings has a total annual income exceeding 4. 000. 000 KM.

Article 6.

Vertical Agreements between Competing Undertakings

- (1) The Block exemption, within the meaning of Articles 3. and 4. of this Regulation, shall not apply to vertical agreements entered into between mutually competing undertakings.
- (2) The block exemption, within the meaning of paragraph (1) of this Article, shall apply to vertical agreements entered into between mutually competing undertakings which do not grant equivalent rights and obligations to each of the parties (non-reciprocal vertical agreements) , and if :
- a) the buyer does not have a total annual income exceeding 4.000.000 KM; or
 - b) the supplier is at same time a manufacturer and a distributor of products, while the buyer is a distributor of the contract products and does not manufacture the competing(contract) products; or
 - c) the supplier is a provider of services at several levels of trade, while the buyer does not provide competing services at the level of trade where it purchases the contract services.

Article 7.

Restrictions that Vertical Agreements May Not Contain

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 to the agreement, have as their object:

- a) the restriction of the buyer's ability to determine freely its sale price of products and services, without prejudice to the possibility of the supplier 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 to agreement;
- b) the restriction of the territory into which or of the group of customers(consumers) to whom the buyer may sell the contract products or services, with the exemption of:
 - 1) when the buyer's active sales is restricted into the exclusive territory or to an exclusive customers group reserved to the supplier or allocated by the supplier to another buyer, where such restriction is not used to limit the sales allowed to the buyer's clients (indirect buyers);
 - 2) when the buyer operating at the wholesale level of trade is restricted in selling (active and passive sales)the products to end- users;
 - 3) when the members of a selective distribution system are restricted in selling (active and passive sales) the products to unauthorized distributors in the markets where such systems operate;
 - 4) the restrictions to the buyer's right to sell(active and passive sales) spare parts (components), supplied for the purposes of incorporation into new product, to end-users (competing suppliers) who use them to manufacture the same type of products as those produced by the supplier.
- c) The restriction of active or passive sale of products to end- users, members of a selective distribution system operating at the retail level of trade, without prejudice to the possibility of prohibiting a member of that selective distribution system from operating out of an authorized place of business;
- d) The restriction of cross-supplies between distributors within a selective distribution system, and between distributors operating at different levels of trade;
- e) The restriction, agreed between a supplier of components and a buyer of those components who incorporates them in a new product, which limits the supplier 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 8.

Active and Passive Sales

- (1) Active sale within the meaning of Article 7. of this Regulation, shall mean sale made by active access to buyers (customers) or exclusive customers group inside another distributor's exclusive territory, conclusion of individual agreements and taking measures for general presentation of products to that customers, the establishment of branches, warehouses or distribution networks and advertising in another distributor's exclusive territory, visits, direct mail and by internet, advertisements in media and other promotions specifically targeted at that customers group or customers in another distributor's exclusive territory.
- (2) Passive sale within the meaning of Article 7. of this Regulation shall mean sale in response to requirements from individual buyers (customers), including delivery of products or services to such customers (consumers), 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 which reaches customers or a group of customers outside of another distributor's exclusive territories and which is considered to be, as a result of the development in the technology, a reasonable method of access to the customers or group of customers outside of such territories is a passive sale.

Article 9.
Conditions that Vertical Agreement May Not Contain

The block exemption shall not apply to vertical agreements relating to sale of new motor vehicles, which directly or indirectly, in isolation or in combination with other factors under the control of the parties to the agreement, containing the vertical restraints have as their object the following obligations contained in:

- a) Any direct or indirect non-compete obligation, the duration of which is unlimited or exceeds a period of five years; non-compete obligation which is tacitly renewable and its duration exceeds a period of five years is deemed to be concluded for an indefinite period;
- b) Any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell products or services, unless such obligation:
 - 1) relates to products or services which compete with the contract products or services (substitute); and
 - 2) is limited to the premises and location from which the buyer has operated during the contract period; and
 - 3) is important to protect know-how transferred by supplier to the buyer, and

provided that the duration of non-compete obligation is limited to a period of one year after termination of the agreement and without prejudice to the possibility of imposing a restriction which is unlimited in time and relates on the use, transfer or disclosure of know-how, provided that the know-how is not accessible publicly, i.e. is not announced.

- c) Any direct or indirect obligation causing the members of a selective distribution system not to distribute (resell) competitive trade marks of products of the particular suppliers (competitors).

Article 10.
Non-Compete Obligations and Know-how

- (1) The non-competitive obligation, within the meaning of Article 9., paragraph a) of this Regulation, shall mean any direct or indirect obligation causing the buyer not to manufacture, sell or resell the substitute products which compete with the contract products, or any direct or indirect obligation on the buyer to purchase from supplier or from another undertaking designated by the supplier more than eighty per cent (80%) of the buyer's total purchases of the contract products or services and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding financial year.
- (2) Pursuant to Article 9. paragraph a) of this Regulation the non-compete obligation, the duration of which is five years, shall not be considered as a prohibited vertical restriction where the contract products or services are sold by the buyer within the premises or location owned by the supplier or leased by the supplier from the third parties non

connected with the buyer, provided that the duration of non-competing obligation does not exceed the period of occupancy of the supplier's premise or location.

- (3) Know-how within the meaning of Article 9., paragraph b) of this Regulation means a package of non-patented, technical information, resulting from experience and testing by the supplier, and which is :
- a) **Secret-** means that the know-how package as a body, or in a precise configuration and assembly of its components, is not generally known or easily accessible;
 - b) **Substantial-** means that the know-how includes information which are indispensable to the buyer for the use, sale or resale of the contract products, and especially for the presentation of the products while selling them, methods for influencing users, technically skilled staff and finance management;
 - c) **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 significance.

Article 11. ***Market Share***

- (1) The block exemption shall apply to the agreements laid down in Article 3. and 4. of this Regulation, provided that the market share of supplier does not exceed thirty per cent (30 %) of the relevant market on which it sells the contract products and /or services.
- (2) Where vertical agreements contain, exclusive supply obligations, the block exemption provided for in Article 3. and 4. of this Regulation, shall apply on condition that the market share of the buyer does not exceed thirty per cent (30%) of the relevant market on which it purchases the contract products or services.

Article 12. ***Calculation of the Market Share***

- (1) The market share on the relevant market, defined in Article 11. of this Regulation, shall be calculated on the basis of the market sales value of the contract products or services and other products and services offered for sale by the supplier, which are regarded as interchangeable by the buyers, by reasons of the products' characteristics, prices and use.
- (2) If the market share value data of an undertaking are not available, the estimations based on other reliable information, applying the market purchase value or the estimations of that value, may be used to establish the buyer's market share in the relevant market where the contract products or services are purchased; this shall not apply if the undertaking had no activity on the relevant market in the financial year preceding the conclusion of the agreement.
- (3) For the purpose of calculation of the market share laid down in Article 11. of this Regulation, the following rules are applied:
 - a) the market share is calculated on the basis of the data relating to the preceding calendar year;
 - b) the market share includes all products granted to the integrated distributors for the purpose of the sale;

- c) if the market share of the undertakings is not more than thirty per cent (30%) on the moment of the agreement conclusion, but subsequently rises above that level without exceeding thirty five per cent(35%), the exemption shall continue to apply for a period of two consecutive calendar years following the year in which the thirty per cent (30%) of market share was first exceeded;
- d) if the market share, on the moment of the agreement conclusion, is not more than thirty per cent (30%) but subsequently rises above thirty five per cent (35%), the exemption shall continue to apply for one calendar year following the year in which the level of thirty five per cent (35%) was first exceeded.
- e) the benefits of block exemption within the meaning of items (c) and (d) of this Article may not be combined so as to exceed a period of two calendar years.

Article 13.

Calculation of Total Annual Income

- (1) For the purpose of calculating the total annual income within the meaning of Article 5. and 6. of this Regulation, the income achieved by the relevant undertaking-a party to the vertical agreement by selling the products and/or services during the financial year preceding the conclusion of the agreement and the income achieved by its connected undertakings shall be added together.
- (2) For the purpose of calculating the total annual income laid down in paragraph (1) of this Article, no total annual income shall be taken of dealings between the relevant undertakings-parties to the vertical agreement and undertakings connected to them, or of dealings between connected undertakings.
- (3) The total annual income calculated pursuant to paragraphs (1) and (2) of this Article does not include the custom duties value, value added and excise duty taxes and rebates.
- (4) The block exemption provided for in this Regulation shall remain applicable where, for a period of two consecutive financial years, the total annual income is exceeded no more than ten per cent (10%).

Article 14.

Other Criteria for Granted Block Exemption

In the assessment of vertical agreements relating to the conditions which must be satisfied for block exemption, apart from the conditions provided for under Article 4., paragraph (3) of the Act and this Regulation, the following criteria is to be taken into account:

- a) The relevant market structure relating to supply and purchase side;
- b) The existence of parallel networks of vertical agreements;
- c) The market position of competing undertakings on the relevant market;

Article 15.

Individual Exemption

- (1) Vertical agreement, which satisfies the conditions for block exemption laid down in this Regulation, within the meaning of Article 7., paragraph (3) of the Act, need not to be submitted to the Council of Competition for assessment in respect of individual exemption, laid down in Article 5. of the Act.

- (2) A request for individual exemption of the vertical agreement may be submitted, pursuant to Article 5. of the Act, , if the agreement concerned does not fall under applicability of block exemption within the meaning of this Regulation.

Article 16.
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 to assess the compatibility of a particular agreement as laid down in Article 3. of this Regulation, if the effects of such agreement (individually or due to their cumulative effects) with other similar agreements in the relevant market, do not fulfill the conditions for block exemption, laid down in Article 4., paragraph (3) of the Act, and particularly where:
- a) access to the relevant market or competition therein is significantly restricted by the cumulative effect of the parallel networks of vertical agreements (of similar vertical restrains) formed by the competitive suppliers or customers who cover together more than fifty per cent (50%) of the relevant market
 - b) considering the exclusive supply or distribution, the buyer have no alternative sources of supply of the contract products or services in the relevant market;
- (2) If the assessment results on compliance of the agreement with the provisions of the Act and this Regulation prove that there are no grounds for applicability of the block exemption, the Council of Competition shall by means of a decision withdraw the application of block exemption to individual or more vertical agreements.

Article 17.
Inapplicability of Block Exemptions

This Regulation shall not apply to vertical agreements a matter and content of which fall under competence of other regulations on block exemptions pursuant to Article 7. of the Act.

Article 18.
Transitional Provisions

- (1) Vertical agreements of this Regulation which have been concluded before this Regulation enters into force must be brought in compliance with the provisions of this Regulation until 31st December 2006.
- (2) The market share and total annual turnover profit income resulting from the vertical agreement from paragraph (1) of this Article shall be calculated in line with the provisions of this Regulation.

Article 19.
Entering into Force

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

C.C. Number: 01-01-26-103-I/06
Sarajevo, 24th January 2006

President
Council of Competition

Sena Hatibović