

Gov. Regulation 55/2002. (III. 26.) of the Government on the exemption from the prohibition on restriction of competition of certain groups of vertical agreements *

The Government, empowered by Article 96 of Act LVII of 1996 on the Prohibition of Unfair and Anticompetitive Market Practices (hereinafter: PURA) has adopted this regulation:

Article 1

- (1) Under this Regulation – with respect to the conditions provided for in Article 17 of the PURA – agreements between undertakings each of which operates at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services (hereinafter: „vertical agreements”) shall be exempted from the prohibition of agreements restricting economic competition (Article 11 of the PURA).
- (2) The exemption provided for in Section (1) shall apply to vertical agreements entered into between an association of undertakings and its members, or between such an association and its suppliers, only if all its members are retailers of goods and if no individual member of the association, together with the undertakings connected with it pursuant to Article 26 (3) of the PURA, has a total annual turnover exceeding HUF 4 billion.
- (3) The exemption provided for in paragraph 1 shall apply to vertical agreements containing provisions which relate to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers. The exemption applies on condition that, in relation to the contract goods or services, those provisions do not contain restrictions of competition having the same object or effect as vertical restraints which are not exempted under this Regulation.
- (4) The exemption provided for in paragraph 1 shall not apply to vertical agreements entered into between competing undertakings; however, it shall apply where competing undertakings enter into a non-reciprocal vertical agreement and:
 - a) the buyer has a total annual turnover no exceeding HUF 2 billion, or
 - b) the supplier is a manufacturer and a distributor of goods, while the buyer is a distributor not manufacturing goods competing with the contract goods, 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.
- (5) This Regulation shall not apply to vertical agreements the subject matter of which falls within the scope of any other block exemption regulation.

* Magyar Közlöny 39, 26. 03. 2002, p. 2491-2493

- (6) For the purpose of calculating total annual turnover within the meaning of Sections (2) and (4), the net turnover achieved during the previous financial year by the relevant party to the vertical agreement and the turnover achieved by its connected undertakings in respect of all goods and services. For this purpose, no account shall be taken of dealings between the party to the vertical agreement and its connected undertakings or between its connected undertakings.

Article 2

- (1) The provisions of Article 1 shall not apply where the market share held by the supplier exceeds thirty per cent of the relevant market on which it sells the contract goods or services.
- (2) In the case of vertical agreements containing exclusive supply obligations, the provisions of Article 1 shall not apply where the market share held by the buyer exceeds thirty per cent of the relevant market on which it purchases the contract goods or services.
- (3) The market share shall be calculated on the basis of the net market sales value relating to the preceding calendar year, achieved on the relevant market (Article 14 of the PURA) of the products or services which are the subject of the agreement. For the purposes of Section (2), it is the market purchase value which shall be used to calculate the market share. If market sales value data or data relating to the market purchase value are not available, estimates based on other reliable market information shall be used to establish it.
- (4) For the purposes of applying the market shares within the meaning of Sections (1) or (2), the market share shall include any goods and services supplied for the purposes of sale to distributors connected with the supplier or the buyer, respectively.
- (5) Where the market share exceeds, after the agreement entered into force, the level determined in Section (1) or (2), the provisions of Article 1 shall continue to apply to the agreement until 30th June of the subsequent calendar year.

Article 3

The exemption provided for in Article 1 shall not apply to vertical 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 buyer's ability to determine its sale price, without prejudice to the possibility of the supplier's 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 incentives offered by, any of the parties; or
- b) the restriction of the territory into which, or of the customers to whom, the buyer may sell the contract goods or services, except:

- ba) the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer, or
- bb) the restriction of sales to end users by a buyer operating at the wholesale level of trade, or
- bc) the restriction of sales to unauthorised distributors by the members of a selective distribution system, or
- bd) the restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier; or
- 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, without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorised place of establishment; or
- d) the restriction of cross-supplies between distributors within a selective distribution system, including between distributors operating at different level of trade; or
- e) the restriction agreed between a supplier of components and a buyer who incorporates those components, which limits the supplier to selling 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 goods.

Article 4

The exemption provided for in Article 2 shall not apply to any of the following obligations contained in vertical agreements:

- a) any direct or indirect non-compete obligation, the duration of which is indefinite or exceeds five years, unless the contract goods or services are sold by the buyer from premises and land owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete obligation concluded for a definite duration does not exceed the period of occupancy of the premises and land by the buyer. A non-compete obligation which is tacitly renewable beyond a period of five years is to be deemed to have been concluded for an indefinite duration; or
- b) any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services, unless such obligation:
 - ba) relates to goods or services which compete with the contract goods or services, and
 - bb) is limited to the premises and land from which the buyer has operated during the contract period, and

bc) is indispensable to protect know-how transferred by the supplier to the buyer,

provided that the duration of such non-compete obligation is limited to a period of one year after termination of the agreement; this obligation is without prejudice to the possibility of imposing a restriction which is unlimited in time on the use and disclosure of know-how which has not entered the public domain; or

- c) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers.

Article 5

For the purposes of this Regulation:

- a) „goods and services” includes any goods and services which are reasonable substitutes for the contract goods and services pursuant to Article 14 (2) of the PURA;
- b) the terms „undertaking”, „supplier” and „buyer” shall include their respective undertakings connected with them pursuant to Article 26 (3) of the PURA, where „buyer” shall include undertakings which sell goods or services on behalf of another undertaking on agreements falling under Article 11 of the PURA;
- c) „competing undertaking” means an undertaking that is active on the relevant market (Article 14 of the PURA) or an undertaking that may be expected potentially to enter the market;
- d) „non-compete obligation” means an obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or an obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 80 % of the buyer's total purchases of the contract goods or services and their substitutes on the relevant market, calculated on the basis of its purchases in the preceding year;
- e) „exclusive supply obligation” means an obligation causing the supplier to sell the goods or services specified in the agreement only to one buyer for the purposes of a specific use or for resale;
- f) „selective distribution system” means a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorised distributors;
- g) „intellectual property rights” includes industrial property rights, copyright and neighbouring rights;

- h) „know-how” means economic, technical and organisational knowledge and experience which constitute intangible assets, as provided for by Article 86 (4) of Act IV of 1959 on the Civil Code of the Republic of Hungary;
- i) „active sales” means sales carried out from a distribution outlet or a warehouse established by the buyer in an exclusive territory which has been reserved to the supplier or has been allocated by the supplier to another buyer, or sales initiated by the buyer to customers within this territory, or to an exclusive customer group which has been reserved to the supplier or has been allocated by the supplier to another buyer;
- j) „passive sales” means the execution of orders which a buyer receives who does not actively approach customers in an exclusive territory which has been reserved to the supplier or has been allocated by the supplier to another buyer, or exclusive customer groups which have been reserved to the supplier or have been allocated by the supplier to another buyer.

Article 6

In respect of particular agreements which are exempted under this Regulation, the Gazdasági Versenyhivatal** may establish pursuant to Article 16/A that the benefit of the group exemption does not apply in the future to such an agreement.

Article 7

- (1) This Regulation shall enter into force on the 15th day after its promulgation.
- (2) Agreements concluded before the date of entry into force of this Regulation which are exempted under any of Gov. Regulations 53/1997. (III. 26.), 54/1997. (III. 26.) and 246/1997. (XII. 20.) but which do not satisfy the provisions of this Regulation shall be exempted for a period of one year from entry into force of this Regulation from the prohibition of agreements restricting economic competition (laid down in Article 11 of the PURA).
- (3) With the entry into force of this Regulation Gov. Regulation 53/1997. (III. 26.) on the exemption from the prohibition on restriction of competition of certain groups of exclusive distribution agreements, Gov. Regulation 54/1997. (III. 26.) on the exemption from the prohibition on restriction of competition of certain groups of exclusive purchasing agreements, Gov. Regulation 246/1997. (XII. 20.) on the exemption from the prohibition on restriction of competition of certain groups of franchise agreements and Sections 2 to 4 of Article 1 of Gov. Regulation 246/2000. (XII. 24.) on the amendment of certain Government Regulations adopted for the implementation of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices are repealed.
- (4) In the domain of the Europe Agreement establishing an association between the Republic of Hungary, of the one part, and the European Communities and their Member States, of the other part, signed in Brussels on 16th December 1991 and in compliance with Article 3 of Act

** the competition authority of Hungary

I of 1994 promulgating the agreement this Regulation contains provisions which are in part compatible with the following legislation of the European Communities: Commission Regulation (EC) No 2790/1999 on the application of Article 81 (3) of the Treaty to categories of vertical agreements and concerted practices.