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## **Grant of Permission to Enter into Vertical Agreements which Restrict or May Restrict Free Competition (Group exemption)**

Passed 27.05.2010 No. 60

This Regulation is implemented on the basis of subsection 7 (1) of the Competition Act

### **§ 1. General Provisions**

(1) With the regulation, a general permission (group exemption) is granted to conclude vertical agreements or coordinate activities between two or more undertakings which restrict or may restrict free competition if these companies operate on different levels of manufacturing or distribution and their agreement and operations include conditions based on which the parties may buy, sell or resell goods and services which are the object of that agreement or operation (hereinafter respectively goods and vertical agreement).

(2) The following terms will be used in the Regulation with the following meanings:

- 1) active sale is the establishing direct contact with the purpose of selling goods to a customer who is located in a territory designated to another distributor (e.g. direct-mail);
- 2) competing undertakings are actual or potential suppliers of competing goods;
- 3) competing goods are goods, which from the perspective of the buyer are interchangeable or replaceable goods with regard to price, quality, technical characteristics, terms of sale and use, consumption characteristics and other characteristics;
- 4) a non-competition obligation is an obligation taken by a direct or indirect agreement according to which the buyer undertakes to not manufacture, buy, sell or resell goods which compete with goods which are the object of the vertical agreement or according to which the buyer is obligated to buy more than 80% of goods which are the object of the vertical agreement and their replacements in the goods market from the supplier or an undertaking designated by the supplier, calculated on the basis of the value of purchases during the previous calendar year;
- 5) know-how is a collection of confidential, significant and identifiable information which is not protected as industrial property;
- 6) an original spare part is a spare part the quality of which corresponds to the quality of motor vehicle parts used in the assembly of the motor vehicle and which is manufactured pursuant to technical requirements and production standards which the manufacturer of the motor vehicle has implemented for the manufacturing of motor vehicle parts or spare parts;
- 7) passive sale means that the distributor responds to customers' orders for the reception of which it made no direct offers (e.g. advertisement or other marketing activities in the media or on the Internet);
- 8) a spare part of similar quality is a spare part regarding which the manufacturer is at all times capable of proving that the quality of the spare part equals the quality of motor vehicle parts used in the assembly of the specific motor vehicle;
- 9) an independent repair shop is a provider of repair and maintenance services for motor vehicles who does not operate in the distribution system created by the supplier of motor vehicles to whom it offers these services. A repair shop which belongs to a distribution system of a specific supplier is considered to be an independent repair shop if it offers repair and maintenance services to motor vehicles from a supplier's distribution system it does not belong to.
- 10) a selective distribution system is a distribution system where the supplier directly or indirectly undertakes to sell goods which are the object of a vertical agreement only to distributors selected based on determined criteria and these distributors undertake to not sell such goods to unauthorised distributors in the territory which the supplier has reserved for the selective distribution system;
- 11) an authorised repair shop is a provider of repair and maintenance services for motor vehicles who operates within the distribution system created by the supplier of motor vehicles;
- 12) an authorised distributor is a distributor operating in the distribution system created by the supplier.

## **§ 2. The Conditions for Applying the Group Exemption**

(1) The group exemption applies on the condition that the supplier's market share is not greater than 30% of the goods market where it sells the goods which are the object of the vertical agreement and the buyer's market share is not greater than 30% of the goods market where it buys the goods which are the object of the vertical agreement.

(2) The group exemption applies to vertical agreements concluded between associations of retail undertakings and members of it or between associations of retail undertakings and their suppliers if all members of the association are retail sellers of the goods and the total sales revenue of goods for the previous calendar year of any member of the association or any undertaking connected to it through dominant influence does not exceed 3.2 million euros.

(3) The group exemption applies to a vertical agreement which includes provisions regarding the assignment to the buyer or use by the buyer of intellectual property rights on the condition that the provisions referred to are directly connected to the use, sale or resale of goods by the buyer or its customers and the mentioned provisions are not the primary purpose of such an agreement.

(4) The group exemption applies to a non-reciprocal agreement between competing undertakings if the supplier is the manufacturer and distributor of goods and the buyer is a distributor who does not manufacture goods which compete with the goods which are the object of the vertical agreement.

(5) The group exemption does not apply to:

- 1) a vertical agreement the object of which falls under the scope of some other group exemption regulation unless the group exemption regulation states otherwise;
- 2) vertical agreements which include similar vertical restrictions if the parallel networks of such vertical agreements cover more than 50% of the goods market.

(6) The market share mentioned in subsections 1 and 5 is calculated on the basis of data for the previous calendar year.

## **§ 3. Restrictions and Conditions Prohibited in a Vertical Agreement**

(1) The group exemption does not apply to a vertical agreement the purpose of which is to directly or indirectly, under the agreement or in combination with other factors Under the control of the parties:

- 1) restrict the buyer's right to determine the selling price without prejudice to the supplier's right to give recommendations regarding selling prices or to determine the maximum selling price on the condition that due to pressure from the parties or based on incentives offered by the supplier (e.g. a price monitoring system, printing a recommended resale price on the goods) the price does not turn into a fixed or minimum selling price;
- 2) limit the territories where or to which the buyer may sell goods which are the object of the vertical agreement or determine customers to whom the buyer may sell goods which are the object of the vertical agreement without prejudice to impose restrictions on the location of the buyer;
- 3) restrict the right of members of a selective distribution system operating on the retail level to carry out active or passive sale to end-users without prejudice to the possibility of prohibiting a member of the distribution system from operating at a certain location;
- 4) restrict cross-supply between suppliers in the selective distribution system including between suppliers who operate on different levels of manufacturing and distribution;
- 5) restrict the freedom of a supplier to sell components to end-users, repair shops or other service providers outside the buyer's own repair or maintenance network in an agreement between the supplier of components necessary for the production of goods (hereinafter components) and a buyer who produces goods from these components.

(2) The group exemption does not apply to a vertical agreement the purpose of which is to directly or indirectly, under the agreement or in combination with other factors Under the control of the parties:

- 1) restrict the sale of motor vehicle spare parts by a member of a selective distribution system to an independent repair shop which uses these parts in the repair and maintenance of motor vehicles;
- 2) restrict, by an agreement between the supplier of original spare parts or spare parts of similar quality, repair equipment or diagnostics equipment and other equipment and the manufacturer of the motor vehicle, the supplier's opportunity to sell these goods or services to an authorised or independent distributor or an authorised or independent repair shop or an end-user;
- 3) restrict the supplier's right to mark vehicle parts or spare parts supplied by it with its brand or logo which the manufacturer of the motor vehicle uses in assembling a new motor vehicle.

(3) The group exemption does not apply to the following obligations included in a vertical agreement:

- 1) a direct or indirect non-competition obligation the term of which is undetermined or which is valid for more than five years or which may be extended without a new agreement for more than five years;
- 2) a direct or indirect obligation according to which the buyer may not manufacture, buy, sell or resell goods which are the object of the vertical agreement after the expiry of the vertical agreement;
- 3) a direct or indirect obligation according to which members of the selective distribution system may not sell goods of designated specific competing suppliers.

#### **§ 4. Restrictions and Conditions Permitted in a Vertical Agreement**

(1) The group exemption applies to a vertical agreement which includes restrictions mentioned in clause 2 of subsection 1 of section 3 if these restrictions mean:

- 1) imposing a restriction on a distributor to conduct active sale outside of the territory or to a group of customers determined in the vertical agreement;
- 2) imposing a restriction on a wholesale level buyer to sell goods to end-users;
- 3) imposing a restriction on a member of the selective distribution system to sell goods to unauthorised distributors in the territory which the supplier has reserved for the selective distribution system;
- 4) imposing a restriction on a buyer's right to sell components supplied to it for the production of goods to customers who would use them to manufacture goods similar to goods offered by the supplier.

(2) In the case of the non-competition obligation mentioned in clause 1 of subsection 3 of section 3, the group exemption applies if the buyer sells goods which are the object of a vertical agreement in spaces or areas which belong to the supplier or which the supplier leases from a third party unrelated to the buyer and the non-competition obligation is valid as long as the buyer uses such spaces or areas.

(3) In the case of the obligation mentioned in clause 2 of subsection 3 of section 3, the group exemption applies to that obligation if the term of validity of such a noncompetition obligation does not exceed one year after the expiry of the vertical agreement and if such an obligation:

- 1) relates to goods which compete with goods which are the object of the vertical agreement;
- 2) is limited to the spaces and areas where the buyer operated during the vertical agreement;
- 3) is necessary to protect the know-how provided to the buyer.

(4) The obligation set forth in clause 3 of subsection 3 does not preclude imposing an indefinite restriction on the use and disclosure of know-how which is not generally known.

#### **§ 5. Implementing Provisions**

(1) The regulation enters into force on 1 June 2010 and is valid until 31 May 2022.

(2) A vertical agreement which has been entered into before 1 June 2010, except an agreement mentioned in subsection 2 of section 3 which does not meet the requirements for a group exemption provided in this regulation, but complies with the conditions set forth in Government of the Republic Regulation no. 195 of 18 June 2002 Grant of Permission to Enter into Vertical Agreements which Restrict or May Restrict Free Competition (Group exemption) (RT I 2002, 52, 330; 2004, 77, 528) may be applied until 31 May 2011.