

On the basis of Article 14 paragraph 1 of the Law on Competition Protection (Official Gazette of the Republic of Montenegro, No 69/05, the Government of the Republic of Montenegro at its session held on 08 February 2007, adopted:

DECREE

ON MORE DETAILED REQUIREMENTS FOR EXEMPTIONS OF AGREEMENTS PER TYPES AND DETERMINING TYPES OF AGREEMENTS THAT MAY BE EXEMPTED FROM PROHIBITION

I GENERAL PROVISIONS

Subject

Article 1

(1) This Decree shall prescribe more detailed requirements for exemption of agreements per types and types of agreements that may be exempted from the prohibition, in the procedure conducted in accordance with the Law on Competition Protection (hereinafter referred to as: the Law).

(2) This Decree shall also apply to a block of exemptions of agreements and to decisions of associations of undertakings and the concerted practices of the undertakings on the market.

Basic definitions

Article 2

(1) As used in this Decree, the following terms shall have the following meaning:

»**Competitive undertakings**« shall mean the existing or possible suppliers of goods and services on the same relevant production market;

»**Obligation of non-competition**« shall mean indirect or direct obligation due to which the buyer does not produce, purchase, sell or resell goods or services competitive to the contracted goods or services, or any indirect or direct obligation of the buyer to purchase from the supplier or from another undertaking selected by the supplier more than 80% of the total volume of contracted goods or services and their substitutes on the relevant market or 50% if dealing with a buyer in motor vehicle industry, calculated on the value of his purchases in the previous calendar year. In the motor vehicle industry, the obligation of a dealer to sell motor vehicles of other suppliers in separate areas of the showroom, so that no interchange between products may occur, does not represent an obligation of non-competition in accordance with this Decree. The obligation of a dealer to have sales persons of motor vehicles who sell only that specific make shall be an obligation of non-competition in accordance with this Decree, unless the dealer decides to have sales persons selling only a specific make and the supplier pays relevant additional costs involved;

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»**Exclusive supply obligation**« shall mean indirect or direct obligation that gives the exclusive right to the supplier to sell contracted goods or services for specific purposes or to re-sell only to a buyer from the territory of Montenegro;

»**Selective distribution system**« shall mean a distribution system in which the supplier is obliged, indirectly or directly, that he will sell the products subject to the agreement only to the dealers and servicemen selected on the basis of specific criteria, with the obligation to sell such products to the authorized dealers;

»**Quantitative selective distribution system**« shall mean a system in which the supplier determines criteria in the selection of dealers or servicemen by which he directly limits their number on the relevant market;

»**Qualitative selective distribution system**« shall mean a system in which the supplier determines the criteria for the selection of the dealer or the serviceman which are exclusively of the qualitative nature due to the characteristic of products that are subject to the agreement or are uniformly determined for all dealers or servicemen, and/or which must not be applied discriminatorily or limit the number of dealers or servicemen on the relevant market;

»**Technical know-how and experience**« shall mean a group of unpatented practical information arising from experience and checking, which are secret, significant and recognizable. Secret shall mean that know-how as a whole or precise configuration and the total of all its components is not generally known and easily accessible. Significant shall mean that know-how comprises data, i.e. information necessary and useful for the production of the products subject to the agreement. Recognizable shall mean that know-how must be described in an understandable way, providing for the possibility to check the fulfilment of the criteria of secrecy and significance;

»**Buyer**« shall mean an undertaking on the market that – based on the agreement referred to in paragraph 1 Article 7 of the Law – sells the goods or services for the account of another undertaking on the market;

»**Authorized serviceman**« shall mean an authorized provider of services of repair and maintenance of motor vehicles, operating within the distribution system established by the supplier of motor vehicles;

»**Unauthorized or independent serviceman**« shall mean a provider of services of repair and maintenance of motor vehicles not operating within the distribution system established by the supplier of motor vehicles;

»**Replicable spare parts**« shall mean the parts to be built in or on a motor vehicle in order to replace the components of that vehicle;

»**Original spare parts**« shall mean spare parts that are of equal quality as the components used in production of a motor vehicle and that are produced according to production specifications and standards provided by the vehicle manufacturer in the production of components or replacement parts for specific motor vehicles, and/or spare parts produced in the same production line as the components. Original parts shall mean the parts for which the manufacturer confirms that they meet the requirements of the quality of the components used in the manufacture of a specific vehicle, even if they have been produced according to specifications and production standards of the vehicle manufacturer;

»**Adequate quality spare parts**« shall mean spare parts meeting the requirements of the quality of the components used in the manufacture of a new motor vehicle and produced by the manufacturer of these components or another market undertaking, for which it can be proved by the manufacturer of these parts that they achieve the quality of these components;

»**Research and development**« shall mean the acquisition of technical know-how and experience regarding products or procedures, as well as performance of technical analyses, systematic studies and tests, including trial production, technical testing of products or procedures, installation of necessary devices, as well as the acquisition of the intellectual property rights based on the results;

»**Contracted procedures**« shall mean technology or procedure that is the result of general research and development”;

»**Contracted product**« shall mean a product that is the result of general research and development and that is either produced or provided for by the application of contracted procedures;

»**Results exploitation**« shall mean the production or distribution of contracted products or the application of the contracted procedures or the cession or licensing of intellectual rights or transfer of technical know-how and experience, needed for such production or application;

»**Research and development or results exploitation that are carried out jointly**«, when necessary operations are carried out by jointly appointed teams of experts, by joint organization or associated undertakings, by entrusting them to a third person or distributing them among the parties to the agreement as specialization in the field of research, development, production or distribution;

»**Obligation of exclusive purchase**« shall mean the obligation of the buyer to procure products subject to the agreement exclusively from a specific supplier;

»**Active sale**« shall mean an active search and access to buyers or a specific group of buyers that are not situated in the area reserved for other parties to the agreement, conclusion of individual agreements, undertaking measures in order to offer the products to such buyers, establishment of affiliations, warehouses or organization of distribution network and promotion in such an area. Active access shall mean also visits to buyers, sending mails to the buyers (electronic mails as well), advertising through media and other means of public information towards target buyers or groups of buyers in the area reserved for other parties to the agreement;

»**Passive sale**« shall mean responding to the requests of individual buyers situated in the areas reserved for other parties to the agreement, including delivery of the products to such buyers, provided that the responding must not result from active sale. Passive sale shall mean also general advertising or media or Internet advertising available in the areas reserved for other parties to the agreement and/or buyers situated in such areas, which is the result of the development of technology or simplicity of access.

Market shares and duration of exemption

Article 3

(1) The exemption of the vertical agreements referred to in paragraph 1, Article 4 of this Decree shall apply if the supplier's market share on the relevant market in which he sells contracted goods or services does not exceed 30%.

(2) If the vertical agreement contains an exclusive supply obligation, the exemption referred to in paragraph 1, Article 4 of this Decree shall apply if the buyer's market share on the relevant market on which he purchases contracted goods or services does not exceed 30%.

(3) For the market shares of vertical agreements in the motor vehicle industry, the first and the second paragraph of this Article shall apply, except for agreements on the establishment of quantitative selective distribution systems for the sale of new motor vehicles, in which the supplier's market share does not exceed 40% and for the agreements on the establishment of qualitative selective distribution systems, in which market share threshold is not applied;

(4) The exemption of the horizontal agreements referred to in paragraph 1, Article 11 of this Decree shall apply to:

1) Agreements on research and development:

- If the parties to the agreement are not competitive undertakings, the exemption shall apply during the duration of research and development. In case of joint use of results, the exemption shall be prolonged for the period of seven years from the moment of launching the products on the Montenegrin market;
- if two or more parties to the agreement are competitive undertakings, the exemption shall apply for the period defined in indent 1 of this item, provided that at the moment of concluding the agreement on research and development joint market share of the parties to the agreement does not exceed 25% of the relevant market for the products which may be improved or replaced by the contracted products;
- upon expiry of the period referred to in indent 1 of this item, as long as the joint market share of the parties to the agreement does not exceed 25% of the relevant market for contracted products;

2) Block of agreements on specialization, if the total market share of the parties to the agreement does not exceed 20% of the relevant market.

II VERTICAL AGREEMENTS EXEMPTIONS

Extent of exemption

Article 4

(1) Agreements between two or more undertakings referred to in paragraphs 1 and 2 of Article 7 of the Law shall be exempted from the prohibition when each of the parties to the agreement operates at different production or distribution stages for the needs of the agreement, or when the agreements define the requirements under which the parties to the agreement may purchase, sell or resell specific goods or services (vertical agreements).

(2) The exemptions referred to in paragraph 1 of this Article shall apply to vertical agreements between associations of undertakings and their members, or between such associations and their suppliers, only if all their members are retail traders.

(3) The exemption referred to in paragraph 1 of this Article shall apply to vertical agreements containing provisions on the cession of intellectual property rights to the buyer or on the use of these rights by the buyer, if these provisions are not the main purpose of such agreements and if they are directly connected to the use, sale or resale of goods or services by the buyer or its end-users. The exemption shall apply if the provisions related to the contracted goods or services contain only limitations necessary to achieve the aims of the agreement and do not exclude competition in the significant part of subject goods or services.

(4) The exemption referred to in paragraph 1 of this Article shall apply also to vertical agreements between competitive undertakings, when they conclude a unilateral agreement on sale of competitive good or service:

- when the supplier is the manufacturer and the dealer of the good, while the buyer is the dealer and does not manufacture the goods subject to the agreement, or
- when the supplier offers services at various levels of trading, while the buyer does not provide competitive services at the same level of trading at which he purchases contracted services.

Limitations which must not be contained in the agreements

Article 5

The exemptions referred to in paragraph 1, Article 4 of this Decree shall not apply to vertical agreements having the following objective:

1) limitation of the buyer's right to determine freely the sales prices for the products and services, not excluding the possibility for the supplier to impose maximum sales price, or recommend sales price, except fixed or minimum sales prices;

2) limitation of the area or group of consumers in which or to which the buyer may sell the products or services subject to the agreement, or groups of customers to whom he may sell, except in the following cases:

- a) if active sale is limited to a specific area or a specific group of buyers reserved for the supplier, or which is allotted by the supplier to the other buyer, if such limitation does not limit the sale to indirect buyers which are the buyer's customers;
- b) if the buyer operating at wholesale level is limited to sell (active and passive sale) the products to end-users;
- c) if the members of the selective distribution system are limited to sell (active and passive sale) the products to end-users;
- d) if the members of the selective distribution system are limited to sell (active and passive sale) the products to unauthorized dealers on the markets where those systems operate; and
- e) if the right of the buyer of spare parts – components, procured for the purpose to be built in a new product; sale (active and passive sale) of such spare parts – components to end-users (competitive suppliers) using such parts to manufacture the products of the same type as the ones manufactured by the manufacturer;

- 3) limitation of the right of the members of selective distribution system operating at the retail trade level to actively or passively sell to end-users;
- 4) limitation of cross deliveries among the dealers within the selective distribution system, including the deliveries among the dealers operating at different trade levels;
- 5) limitation agreed upon between a supplier of the components and a buyer who builds in these components, which impose the limitation to the supplier in selling the components as spare parts to the end-users or servicemen to whom the buyer has not entrusted servicing of his goods.

Obligations from specific agreements that the exemption is not applied to

Article 6

The exemption referred to in paragraph 1, Article 4 of this Decree shall not apply to the following obligations contained in vertical agreements:

- 1) any indirect or direct obligations of non-competition, the duration of which is indefinite or exceeds 5 years. It shall be considered that any obligation of non-competition that is silently renewed and that exceeds five years is agreed for indefinite period of time;
- 2) any indirect or direct obligations limiting the buyer's right to produce, purchase and resell after the expiration of the period that the agreement has been concluded for, except if such limitation:

- is related to the products or services which are competitive to the products or services subject to the agreement (replaceable products);
- is related to business premises and country from which the buyer was operating during the duration of the agreement;
- is considered necessary in order to protect know-how transferred to the buyer by the supplier; and

under the condition that the duration of such obligation of non-competition is limited to one year after the termination of the agreement and if it does not exclude the possibility for imposing the limitation for indefinite time period and if it is related to application and disclosure of know-how which is not accessible to the public;

- 3) indirect or direct obligations to the members of the selective distribution system that they must not sell competitive brands of products of certain competitive suppliers.

Inapplicability of vertical agreements exemption

Article 7

Exemption of vertical agreements shall not apply if the effects of individual vertical agreements exempted in accordance with this Decree are not in compliance with paragraph 3, Article 7 of the Law, particularly when the access to the relevant market or competition is substantially limited as the result of cumulative effect of parallel networks of similar vertical limitations by competitive suppliers or buyers.

III EXEMPTIONS OF AGREEMENTS IN MOTOR VEHICLE INDUSTRY

Extent of exemptions

Article 8

(1) Exemptions referred to in Article 4 of this Decree shall also apply to vertical agreements in motor vehicle industry.

(2) The exemption referred to in paragraph 1 of this Article shall apply only if the vertical agreement concluded between the supplier of new motor vehicles and dealer or serviceman prescribes that such agreement is concluded for minimum five year period; in such a case each party shall be obliged to inform the other party about his intention not to prolong the agreement at least six months in advance.

(3) The exemption referred to in paragraph 1 of this Article shall apply only if vertical agreement stipulates that the parties to the agreement may initiate litigation in connection with fulfilment of contracted obligations.

Inapplicability of the exemption to specific agreements

Article 9

(1) The exemption referred to in paragraph 1, Article 8 of this Decree shall not apply to vertical agreements referred to in items 1, 2 and 4, Article 5 of this Decree.

(2) The exemption referred to in paragraph 1, Article 8 of this Decree shall not apply to vertical agreements having indirectly or directly the following objective:

- limitation of active or passive sale of motor vehicles, spare parts of motor vehicles or repair or maintenance services to end-users, imposed on members of the selective distribution system operating at retail level, with the exception of prohibition imposed on the member of selective distribution system to operate in a place of business for which he does not have the authorization under the agreement;
- limitation of sale of spare parts for motor vehicles, imposed on members of selective distribution system, independent servicemen who use these parts for repair and maintenance of motor vehicles;
- limitation to the dealer's activity of selling another motor vehicle corresponding to a model from the dealer's contracted offer;
- limitation of the motor vehicle dealer's activity of concluding agreements for providing repair and maintenance services with an authorized serviceman, whereby the supplier may require the dealer to inform the customer about the authorized serviceman, his address and distance, before conclusion of sales purchase agreement, if the authorized serviceman is not situated in the same location as the salesrooms. The same limitation may be imposed only if the dealers whose workshops are not situated in the same place as the salesrooms have the similar obligation;
- limitation of the serviceman's activity of providing services of repair, maintenance and delivery of spare parts;
- limitation agreed between a supplier of original spare parts or adequate quality spare parts, service tools or other equipment and the motor vehicle manufacturer, which limits the supplier's possibility of selling these goods to independent dealers, authorized or unauthorized servicemen or end-users;

- limitation of the dealer's or serviceman's activity of procuring original spare parts or adequate quality spare parts from independent undertakings of his own choice, and to use them in the repair and maintenance of motor vehicles, with the exception of a new motor vehicles supplier's possibility of requiring the use of original spare parts, supplied by himself, for repairs within the warranty period and for free servicing;
- limitation agreed between a motor vehicles manufacturer using components for the primary manufacture of motor vehicles, and the supplier of such components, which restricts the supplier to efficiently and visibly designate delivered components or original spare parts and adequate quality spare parts with its make or logo.

(3) The exemption referred to in paragraph 1, Article 8 of this Decree shall not apply if the motor vehicles supplier does not provide the third parties with the access to technical information, equipment, tools, including all hardware and training necessary for repair and maintenance of these motor vehicles. If any individual element is the subject of an intellectual property rights or forms technical know-how and experience, access must not be denied in a manner that would represent abuse.

Obligations from specific agreements that the exemption does not apply to

Article 10

The exemption referred to in paragraph 1, Article 8 of this Decree shall not apply to obligations stipulated in vertical agreements related to sale of new motor vehicles, provision of repair and maintenance services or sale of spare parts, as follows:

- 1) any indirect or direct obligation of non-competition;
- 2) any indirect or direct obligation limiting the motor vehicles serviceman's possibility of providing repair and maintenance services for the products of competitive suppliers;
- 3) any indirect or direct obligation limiting the members of selective distribution system to possibility to sell products of competitive suppliers or provide repair and maintenance services for motor vehicles of competitive suppliers;
- 4) any indirect or direct obligation of dealer or serviceman that after termination of agreement, they do not manufacture, purchase, sell or resell motor vehicles or do not provide repair and maintenance services ;
- 5) any indirect or direct obligation due to which a dealer operating at retail trade level does not offer leasing services referring to contracted or other corresponding goods;
- 6) any indirect or direct obligation regarding the place of business of an authorized serviceman, if a selective distribution system is applied.

IV EXEMPTIONS OF HORIZONTAL AGREEMENTS

Extent of exemption

Article 11

(1) Paragraph 1, Article 7 of the Law shall not apply to the agreements between two or several undertakings which operate at the same production and trade level (horizontal agreements).

(2) The exemption referred to in paragraph 1 of this Article shall apply to block of agreements on research and development and blocks of agreements on specialization.

(3) Agreements on research and development referred to in paragraph 2 of this Article shall be considered to be horizontal agreements concluded between two or several independent undertakings, which regulate the following requirements:

- joint research and development of products or processes and joint exploitation of the results of this research and development, or
- joint exploitation of the results of research and development of products or processes, which were carried out by the same undertakings on the basis of the previously concluded agreement, or
- joint research and development of products or processes, excluding joint exploitation of the results of this research and development.

(4) Agreements on specialization referred to in paragraph 2 of this Article shall be considered to be horizontal agreements concluded between two or several independent undertakings, as follows:

- agreements on unilateral specialization, whereby a party to the agreement agrees to stop the manufacture of specific products or to refrain from production of these products and to buy them from an economic entity - competitor, while the competitor agrees to manufacture and to deliver these products;
- agreements on multilateral specialization, whereby two or more parties to the agreement mutually bind themselves to stop or to refrain from manufacture of specific but different products, and to buy these products from other parties to the agreement, who deliver these products;
- agreements on joint manufacture, whereby two or more parties to the agreement jointly manufacture specific products.

(5) The exemption referred to in paragraph 1 of this Article shall also apply if:

- the parties within an agreement on unilateral or multilateral specialization or an agreement on joint manufacture bind themselves to an exclusive purchase or exclusive delivery, or
- the parties within an agreement on joint manufacture, which is the subject of an agreement on specialization, do not sell independently but provide joint distribution, or appoint a third person as an exclusive or non-exclusive dealer, if this person is not a competitive undertaking.

(6) The exemption referred to in paragraph 1 of this Article shall also apply to the provisions contained in horizontal agreements, which do not represent primary objective of such agreements, but are directly related to them and necessary for their application.

Requirements which must be contained in the agreements on research and development

Article 12

The exemption referred to in paragraph 2, Article 11 of this Decree shall apply under the following requirements:

- 1) if all parties to the agreement have the access to the results of joint research and development for the purpose of further research and exploitation;
- 2) if the agreement on research and development covers only joint research and development, each party to the agreement is free to exploit independently the results of joint research and development and of all previously existing technical know-how and experience needed for the purpose of such research;
- 3) if any joint exploitation refers to the results of protected intellectual property or forming technical know-how and experience, which essentially contribute to technical or economic progress, and are decisive in the manufacture of products or the application of contracted procedures subject to the agreement;
- 4) if undertakings included in the specialized manufacture fulfil the orders of all parties to the agreement, except when the agreement on research and development also envisages joint distribution.

Inapplicability of the exemption to specific agreements

Article 13

(1) The exemption referred to in paragraph 2, Article 11 of this Decree shall not apply to the agreements on research and development having indirectly or directly the following objective:

- limitation of freedom of the parties to the agreement to carry out research and development independently or in cooperation with third parties, in the area which is not related with the area of joint research and development and in similar area;
- prohibition to contest the validity of intellectual property rights after termination of the agreement;
- limitation of manufacture or sale;
- determination of prices in the sale of contracted products to a third person;
- limitation concerning buyers to whom the parties to the agreement may deliver contracted products after expiration of seven years from the moment when the contracted products were launched on the market of the Republic of Montenegro;
- prohibition of passive sale of contracted products;
- conditioning that the licenses for manufacture of contracted products or for application of contracted processes are not granted to third parties, if the agreement does not envisage the exploitation of the results of joint research and development by at least one party to the agreement, or when this is not carried out;

(2) The exemption referred to in paragraph 2, Article 11 of this Decree shall not apply to the agreements on specialization having indirectly or directly the following objective:

- determination of prices in the sale of products to third persons;
- limitation of manufacture or sale, or
- division of market or buyers, and/or end-users.

(3) Prohibited limitations in the context of paragraphs 1 and 2 of this Article shall not be considered to be the determination of:

- manufacturing objectives, whenever the exploitation of results includes joint manufacture of contracted products;
- sales objectives and determination of prices for end-users, whenever the exploitation of results includes joint distribution of contracted products;
- quantity of products within the agreements on unilateral or multilateral specialization or on determination of the scope of capacity and manufacture and quantity of manufacture in a joint production venture within the agreements on joint manufacture;
- sales objectives and product prices, which a joint manufacture venture charges to its direct customers on the basis of Article 11 paragraph 5, indent 2 of this Decree.

Inapplicability of the exemption of horizontal agreements

Article 14

The exemption of vertical agreements shall not apply if the effects of individual horizontal agreements exempted in accordance with this Decree are not in compliance with the provisions of Articles 8 and 14 of the Law.

V TRANSITIONAL AND FINAL PROVISIONS

Harmonization of agreements

Article 15

The existing agreements in the area of motor vehicle industry must be harmonized with the provisions of this Decree at latest within the period of 3 months from the day it enters into force.

Entering into force of the Decree

Article 16

This Decree shall enter into force on the eighth day upon its publication in the Official Gazette of the Republic of Montenegro.

No: 03-504

Podgorica

8 February 2007

Government of the Republic of Montenegro

President Zeljko Sturanovic, m.p.