

Art.*

**Gov. Regulation 246 /1997. (XII.20.) of the Government
on the exemption from the prohibition on restriction of competition of certain
groups of franchise agreements**,****

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

* Respective provision of Com. Reg. (EEC) No 4087/88

** As amended by Gov. Reg. 246/2000. (XII. 24.) of the Government 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

*** Magyar Közlöny 116, 20.12.1997, p. 8917; corrigendum Magyar Közlöny 2, 16. 01. 1998, p. 205

Article 1

- 1(1) 1. Under this Regulation, with respect to the conditions provided for in Article
2(a) 17 of AUAM, franchise agreements (hereinafter: agreements) shall be
3(1)(c) exempted from the prohibition of agreements restricting economic
and 3(1)(d) competition (Article 11 of AUAM).
1 2. Section (1) shall apply notwithstanding that the franchisor undertakes not to
itself exploit the franchise defined in the agreement in the territory defined in
the agreement nor to grant the right to exploit it there to third parties.
3. Furthermore, Section (1) shall apply notwithstanding that the franchisee
undertakes not to extend its business in activities and/or in territories where it
would compete with a member of the franchised network, including the
franchisor.
4. Only agreements between one franchisor and one franchisee shall be
exempted under this Regulation.

Article 2

- 5(a) The provision of Article 1(1) shall not apply where:
3(1)(b),
4(a) and
5(b)
5(e)
5(d)
- a) parties producing goods which are identical or are reasonable substitutes
for each other pursuant to Article 14(2) of AUAM enter into agreements in
respect of such goods; or
- b) the agreement prohibits the franchisee, even for cases of breach by the
franchisor of an obligation to supply goods, to obtain the franchisor's goods
from other franchisees of the franchised network or from other distributors
which are in contractual relation with the franchisor or to obtain from other
sources supplies of goods of a quality equivalent to those offered by the
franchisor; or
- c) the agreement restricts the freedom of the franchisee, directly or indirectly,
to determine prices for goods distributed or services provided under the
agreement, without prejudice to the right of the franchisor of recommending
sale prices; or
- d) the agreement prevents the franchisee from using the know-how after
termination of the agreement where it has become generally known or easily
accessible, other than by breach of an obligation by the franchisee.

Article 3

- 1(2)and1(3) The provisions of this Regulation shall apply mutatis mutandis to agreements which:
) (c) a. grant the right to the franchisee to conclude franchise agreements with third
parties for the purposes of exploiting the franchise;
b. are concluded by the franchisee mentioned in point a) with further
franchisees for the purposes of exploiting the franchise.

Article 4

- 1(3)(a) For the purposes of this Regulation:
1(3)(b)
1(3)(d) a. "franchise" means a package of industrial property rights connected with
know-how and trade marks or trade names and, depending on the subject-
matter of the agreements, of other industrial property rights or of copy rights,
to be exploited for the distribution of goods or the provision of services;

- b. "franchise agreement" means an agreement, save that which is concluded only for wholesale purposes, whereby the franchisor grants the franchisee, in exchange for consideration, the right to exploit a franchise, for the purposes of distributing goods or performing services specified in the agreement, in a certain territory; it includes at least obligations relating to:
 - ba) the use of a common name or business design and a uniform presentation of contract premises and/or means of transport specified in the agreement,
 - bb) the communication by the franchisor to the franchisee of know-how which forms part of the franchise,
 - bc) the continuing provision by the franchisor to the franchisee of commercial or technical assistance;
- c. "franchisor's goods" means products produced by the franchisor or according to its instructions or obtained with its approval and/or bearing the franchisor's name or trade mark or distinguishing mark.

Article 4/A

In respect of agreements exempted under this regulation the Office of Economic Competition may establish pursuant to Article 16/A of the AUAM that the benefit of the group exemption does not apply to a particular agreement.

Article 5

This Regulation shall enter into force on 1 January 1998, its provisions shall be applied to agreements concluded after that date.