

Gov. Regulation 53/2002. (III. 26.) of the Government on the exemption from the prohibition on restriction of competition of certain groups of specialisation 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:

Article 1

(1) Under this Regulation – with respect to the conditions provided for in Article 17 of the AUAM – specialisation agreements (hereinafter: agreements) by virtue of which

a) one party agrees, for the duration of the agreement, to cease production of certain products specified in the agreement or to refrain from producing these products and to purchase them from a competing undertaking, while the competing undertaking agrees to produce and supply these products (unilateral specialisation agreements), or

b) the parties on a reciprocal basis agree, for the duration of the agreement, to cease or refrain from producing certain but different products specified in the agreement and leave it to other parties to produce these products (reciprocal specialisation agreements), or

c) the parties agree, for the duration of the agreement, to produce jointly certain products specified in the agreement (joint production agreements)

shall be exempted from the prohibition of agreements restricting economic competition (Article 11 of the AUAM).

(2) The exemption provided for in Section (1) shall also apply to provisions contained in agreements which do not constitute the primary object of such agreements, but are necessary for and directly related to the implementation of them, such as provisions concerning the assignment or use of intellectual property rights.

(3) The exemption shall also apply

a) to exclusive purchase and/or exclusive supply obligations agreed in unilateral or reciprocal specialisation agreements or joint production agreements, or

b) to the joint distribution of the products which are the subject of the agreement, or

c) to the appointment of a third party distributor in joint production agreements provided that the third party is not a competing undertaking.

Article 2

(1) The provisions of Article 1 shall not apply where the combined market share of the participating undertakings exceeds thirty per cent of the relevant market.

* Magyar Közlöny 39, 26. 03. 2002, p. 2487-2488

- (2) 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 AUAM) of the product which is the subject of the agreement; if market sales value data are not available, estimates based on other reliable market information shall be used to establish it.
- (3) Where the market share exceeds, after the agreement entered into force, the level determined in Section (1), the provisions of Article 1 shall continue to apply to the agreement until 30th June of the subsequent calendar year.

Article 3

- (1) The provisions of Article 1 shall not apply to 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 fixing of prices when selling the products to third parties; or
 - b) the limitation of output or sales; or
 - c) the allocation of markets or customers.
- (2) Section (1) shall not apply to:
 - a) provisions on the agreed amount of products in unilateral or reciprocal specialisation agreements; or
 - b) the setting of the capacity and production volume of a production joint venture in a joint production agreement.

Article 4

For the purposes of this Regulation:

- a) „participating undertakings” means undertakings party to the agreement and their respective undertakings connected with them pursuant to Article 26 (3) of the AUAM;
- b) „product” means a good and/or a service, including both intermediary goods and/or services and final goods and/or services, with the exception of distribution and rental services;
- c) „production” means the manufacture of goods or the provision of services and includes production by way of subcontracting;
- d) „competing undertaking” means an undertaking that is active on the relevant market (Article 14 of the AUAM) or an undertaking that may be expected potentially to enter the market;

- e) „exclusive supply obligation” means an obligation to supply a competing undertaking with the product which is the subject of the agreement only if it is a party to the agreement;
- f) „exclusive purchase obligation” means an obligation to purchase the product which is the subject of the agreement only from the party which agrees to supply it;
- g) „intellectual property rights” includes industrial property rights, copyright and neighbouring rights.

Article 5

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 6

- (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 Gov. Regulation 85/1999. (VI. 11.) 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 AUAM).
- (3) With the entry into force of this Regulation Gov. Regulation 85/1999. (VI. 11.) on the exemption from the prohibition on restriction of competition of certain groups of specialisation agreements and Article 1 (7) 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 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 2658/2000 on the application of Article 81 (3) of the Treaty to categories of specialisation agreements.

** the competition authority of Hungary

