

Gov. Regulation 54/2002. (III. 26.) of the Government on the exemption from the prohibition on restriction of competition of certain groups of research and development 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 – research and development agreements (hereinafter: agreements) the subject of which is:
 - a) joint research and development of products or processes and joint exploitation of the results of that research and development, or
 - b) joint development of products or processes excluding joint exploitation of the results, or
 - c) joint exploitation of the results of research and development jointly carried out pursuant to a prior agreement between the same parties.
- (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, including an obligation not to carry out, independently or together with third parties, research and development in the field to which the agreement relates or in a closely connected field during the execution of the agreement.
- (3) Where the results are jointly exploited, the exemption relates to products and processes which are protected by intellectual property rights or constitute know-how, which substantially contribute to technical or economic progress and are decisive for the research and development.

Article 2

The exemption shall apply for the duration of the research and development; where the results are jointly exploited, it shall continue to apply until the patents, and the protection of designs, industrial designs and topographies, relating to the products and/or processes which are the subject of the agreement, expire; in the absence of such protection it shall continue to apply for five years from the time the contract products are first put on the market.

Article 3

* Magyar Közlöny 39, 26. 03. 2002, p. 2489-2490

- (1) The provisions of Article 1 shall not apply where the participating undertakings are competing undertakings and their combined market share exceeds thirty per cent of the relevant market.
- (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 products capable of being improved or replaced by the contract products and of the contract products, for the duration of the research and development and for the period thereafter during which the exemption continues to apply, respectively; 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 4

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,

- a) do not allow all the participating undertakings to have access to the results of the research and development;
- b) prevent any of the participating undertakings from exploiting any pre-existing technical knowledge which was used to the joint research and development provided this participating undertaking had been entitled to exploit it before the agreement was entered into;
- c) restrict the freedom of the parties
 - ca) to carry out research and development independently or in cooperation with third parties in a field unconnected with that to which the research and development relates or, after the completion of the research and development, in the same field or in a connected field; or
 - cb) to determine the quantity of the contract products they intend to produce or sell or the extent to which they intend to employ the contract processes in their activities; or
 - cc) without prejudice to the application of points b) and c) of Article 1(1), to exploit the results of the joint research and development;
- d) restrict the parties as to the consumers they may serve or in their determination of prices and of general terms and conditions;
- e) allow the parties to fix the prices when selling the contract products to third parties;

- f) make it difficult for any of the parties that resellers or consumers obtain the contract products from other sources, in particular where intellectual property rights or other rights are exercised so as to prevent them from obtaining the products from other undertakings or from selling them to other undertakings;
- g) prohibit the parties from challenging after completion of the research and development or after the expiry of the research and development agreement the validity of intellectual property rights held by them which are relevant to the research and development or protect the results of the research and development, respectively, without prejudice to the possibility to provide for termination of the research and development agreement in the event of one of the parties challenging the validity of such intellectual property rights;
- h) impose the obligation on the parties not to grant licenses to third parties to manufacture the contract products or to apply the contract processes where the exploitation by at least one of the parties of the results of the joint research and development is not provided for or does not take place.

Article 5

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) „research and development” means the acquisition of know-how relating to products or processes and the carrying out of theoretical analysis, systematic study and experimentation, including experimental production, technical testing of the products and processes, the establishment of the necessary facilities and the obtaining of intellectual property rights for the results;
- c) „contract process” means a process or technology arising out of the research and development;
- d) „contract product” means a product or service arising out of the research and development or manufactured or provided applying the contract processes;
- e) „intellectual property rights” includes industrial property rights, copyright and neighbouring rights;
- f) „exploitation of the results” means the production or distribution of the products which are subject of the agreement or the application of the contract processes or the assignment or licensing of intellectual property rights or the communication of know-how which relate to them;
- g) „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;

- h) research and development, or the exploitation of the results, are carried out „jointly” where the work involved is carried out:
 - ha) by a joint team, organisation or undertaking, or
 - hb) by a third party jointly entrusted by the parties, or
 - hc) by the parties which allocate them between themselves by way of specialisation in research, development, production or distribution;
- i) „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.

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 Gov. Regulation 84/1999. (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 84/1999. (VI. 11.) on the exemption from the prohibition on restriction of competition of certain groups of specialisation agreements and Article 1 (6) 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 2659/2000 on the application of Article 81 (3) of the Treaty to categories of research and development agreements.

** the competition authority of Hungary

