

Art.

Gov. Regulation 86/1999. (VI.11.) of the Government on the exemption from the prohibition on restriction of competition of certain groups of technology transfer 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. (EC) No 240/96

** Magyar Közlöny 51, 11. 06. 1999, p. 3295; corrigendum Magyar Közlöny 66, 21.07.1999, p. 4389

*** 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

Article 1

- 1 (1) (1) Under this Regulation, with respect to the conditions provided for in Article 17 of AUAM patent licensing and know-how licensing agreements and mixed patent and know-how licensing agreements (hereinafter: mixed licensing agreements) shall be exempted from the prohibition of agreements restricting economic competition (Article 11 of AUAM).
- 1 (1) (1) rec. (6) (2) The exemption provided for in Section (1) shall apply also to agreements containing ancillary provisions relating, in addition to patent licensing or know-how-licensing, to other intellectual property rights, where they contribute to the achievement of the object of the licensed technology.
- 6 (1) (3) The exemption provided for in Section (1) shall apply also to agreements whereby an exploiter, which is expressly authorised by the patentee or the holder of the know-how (hereinafter: the beneficiaries) to do so, licenses the exploitation of the invention or the know-how to third parties.
- 6 (2) (4) The exemption provided for in Section (1) shall apply also to assignments, separately or together, of patents or know-how where the risk associated with exploitation remains with the assignor, in particular where the consideration of the assignment is dependent on the turnover obtained by the assignee in respect of products manufactured using the patents or know-how, the quantity of such products or the number of operations carried out employing the respective patent or know-how-based technologies.
- 6 (3) (5) Sections (1) to (4) shall apply notwithstanding undertakings assuming in the agreement the rights and obligations of the beneficiary or the exploiter where such undertakings are connected with the parties pursuant to Article 26 (3) of AUAM.
- 1 (1) (2) (1) (1) (1) (6) Sections (1) to (4) shall apply notwithstanding the beneficiary's undertaking an obligation
- a) not to exploit the licensed technology or product in the licensed territory himself;
- b) not to license other persons to exploit the licensed technology or product in the territory defined in the agreement.
- 1 (1) (3) (7) Sections (1) to (4) shall apply notwithstanding the exploiter's undertaking an obligation
- a) not to exploit the licensed technology or product outside the territory defined in the agreement;
- 1 (1) (4) b) to restrict the exploitation of the licensed technology or product to fields of use which are not licensed to third parties;
- 1 (1) (7) c) to sell the licensed product under the beneficiary's trademark or other distinguishing mark, provided that he is not prevented by the agreement from identifying himself, as the manufacturer of the product;
- 1 (1) (8) d) to limit his production of the licensed product to the quantities he requires in manufacturing his own products and to sell it only as part of, replacement part for or accessory of his own products, provided that such quantities are freely determined by him.

- (8) The exemption provided for in Sections (1) to (4) shall apply for the following period:
 - 1 (2) a) for patent licences, as long as the invention is protected by patents;
 - 1 (3) b) for know-how-licences, for a period of ten years from the date when the beneficiary first put the licensed product on the market but only to the date at which the know-how becomes public domain or ceases otherwise to constitute part of intangible assets.
- 1 (4) (9) For mixed licensing agreements, the exemption provided for in Sections (1) to (4) shall apply for the duration defined in Section (8) Subsection a) or b) whichever period is the longer.
- 1 (1) 10) Only agreements between one beneficiary, for the case of joint patents: more than one beneficiaries, and one exploiter shall be exempted under this Regulation.

Article 2

- 2 (1) (9) (1) The provisions of Sections (1) to (4) of Article 1 shall apply notwithstanding the presence of the following clauses, which are otherwise not restrictive of competition, whereby the exploiter obliges himself
 - a) to pay a minimum royalty,
 - b) to produce a minimum quantity of the licensed product,
 - c) to carry out a minimum number of operations for the exploitation of the licensed technology,
 determined by the agreement.
- (2) The provisions of Sections (1) to (4) of Article 1 shall apply notwithstanding the agreement's authorizing the beneficiary to terminate the exclusivity of the licence for exploitation or to stop licensing improvements of the licensed technology when the exploiter enters into competition with the beneficiary, with undertakings connected with him pursuant to Article 26 (3) of AUAM or with third undertakings in respect of research and development, production, use or distribution of products which are reasonable substitutes for the licensed product pursuant to Article 14 of AUAM.

Article 3

- The provisions of Sections (1) to (4) of Article 1 shall not apply where
 - a) the parties were competing manufacturers before the conclusion of the agreement in respect of the licensed product or the patented process and
 - 3 (4) aa) any of them is restricted by the agreement, within the same field of use or within the same product market, as to the consumers they may serve, or
 - 7 (1) ab) the exploiter's market share on the relevant market of the licensed product exceeds thirty per cent
 - ;
 - b) any of the parties is restricted by the agreement
 - 3 (1) ba) in the determination of prices for the licensed products, or
 - 3 (2) bb) from competing within the territory defined in the agreement with the other party or with third undertakings in respect of research and development, production, use or distribution of products which are substitutes for the licensed product;
 - 3 (6) c) the exploiter is obliged to assign in part or in whole to the beneficiary rights to improvements or new applications of the licensed technology;
 - 4 (2) (a) d) the exploiter is obliged to accept quality specifications or further licences or to procure goods or services which are not necessary for a technically satisfactory exploitation of the licensed technology or for ensuring that the production of the exploiter conforms to the quality standards that are respected by the beneficiary or by third parties.

Article 4

For the purposes of this Regulation

- 10 (7) a) "licensed technology" means the know-how and the necessary process or product patents, existing at the time the agreement is concluded, and improvements subsequently made to the know-how or patents, irrespective of whether and to what extent they have been exploited by the parties or by other exploiters;
- 10 (8) b) "the licensed products" are goods or services the production or provision of which requires the use of the licensed technology;
- c) "know-how" is economic, technical and organizational 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;
- 8 (1) d) patent applications, protection of and applications for protection of utility models, protection of and applications for protection of topographies of semiconductor products shall also be deemed to be "patents";
- 10 (5) e) "necessary patents" are patents the licensing of which is indispensable to starting an expedient exploitation of the licensed technology;
- 10 (9) f) "substitutes for the licensed product" are products which are considered by users interchangeable for or substitutable by the licensed product in view of their characteristics, price and intended use.

Article 5

- rec. (8) (1) This Regulation shall not apply to technology transfer agreements which form parts of agreements defined in Article 1 of Gov. Regulation 246/1997. (XII. 20.) on the exemption from the prohibition on restriction of competition of certain groups of franchise agreements.
- (2) Furthermore, this Regulation shall not apply to
 - 5 (1) (3) a) agreements under which one party grants the other a patent and/or know-how licence and in exchange the other party, in separate agreements or through undertakings connected to him pursuant to Article 26 (3) of AUAM, grants the first party a patent, trademark or know-how licence or exclusive sales rights, where the parties are competitors in relation to the products covered by the latter agreements (crosslicences);
 - 5 (1) (5) b) agreements entered into solely for the purpose of sale;
 - 5 (1) (1) c) agreements between members of a patent pool.

Article 5/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 6

- (1) This Regulation shall enter into force on the 15th day after its promulgation, its provisions shall be applied to agreements concluded after that date.
- (2) 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 240/96 on the application of Article 85 (3) of the Treaty of Rome to certain categories of technology transfer agreements