

Disclaimer: The English language text below is provided by the Translation and Terminology Centre for information only; it confers no rights and imposes no obligations separate from those conferred or imposed by the legislation formally adopted and published. Only the latter is authentic. The original Latvian text uses masculine pronouns in the singular. The Translation and Terminology Centre uses the principle of gender-neutral language in its English translations. In addition, gender-specific Latvian nouns have been translated as gender-neutral terms, e.g. chairperson.

Republic of Latvia

Cabinet

Regulation No 434

Adopted 27 April 2004

Regarding Vertical Agreement Exemption from the Agreement Prohibition Specified in Section 11, Paragraph one of the Competition Law

*Issued pursuant to
Section 11, Paragraph four of the Competition Law*

1. Terms used in these Regulations:

1.1. active sales – active operations the aim of which is to sell goods, for example, by means of advertising or other measures offering to acquire goods for purchasers or establishing warehouses or sales points;

1.2. exclusive distribution agreement – vertical agreement in accordance with which the seller directly or indirectly undertakes to sell goods covered by the agreement only to one purchaser for resale in a particular territory;

1.3. exclusive sale (delivery) agreement – vertical agreement in accordance with which the seller directly or indirectly undertakes to sell goods covered by the agreement only to one purchaser who utilises them for production of goods;

1.4. franchise agreement – vertical agreement in accordance with which a franchiser transfers to the other party to the agreement – franchisee – in exchange for direct or indirect financial consideration, the right to exploit the aggregate of intellectual property rights (especially – the firm name, the trademark, the shop sign, the design, special professional information, know-how and patents) for utilisation or marketing of goods;

1.5. a distributor – purchaser who purchases goods for resale;

1.6. non-competition commitment - within the meaning of these Regulations – a vertical agreement in accordance with which a purchaser directly or indirectly undertakes not to produce, purchase or sell the goods which are in competition with the goods covered by the agreement, or directly or indirectly undertakes to purchase from a seller or from a market participant specified by the seller more than 80 per cent of the total amount of goods covered by the agreement or goods in competition with them in a certain market during the previous calendar year;

1.7. passive sales – sales of goods to individual purchasers upon a request thereof, not performing the measures aimed at the demand for creation or increase of goods within a certain buying group or purchasers of a certain territory ;

1.8. selective distribution agreement – vertical agreement in accordance with which a seller directly or indirectly sells the goods only to distributors selected under specific criteria

and in which these distributors have a duty not to sell goods covered by the agreements to unauthorised distributors; and

1.9. vertical agreement – agreement entered into between two or more market participants each of who performs economic activities at a different level of production and distribution of goods, and which applies to the purchase or sales provisions of goods.

2. Regulations prescribe vertical agreements of individual market participants, which are exempted from the prohibitions referred to in Section 11, Paragraph one of the Competition Law, if these agreements comply with all the requirements referred to in these Regulations, and vertical agreements of individual market participants regarding which the Competition Council need not be notified in accordance with Section 11, Paragraph two and three of the Competition Law, if this activity does not significantly affect competition.

3. The exemption referred to in Paragraph 2 of these Regulations applies also to the following types of vertical agreements, provided they comply with all the requirements referred to in these Regulations:

- 3.1. non-competition commitment;
- 3.2. exclusive sales agreement;
- 3.3. exclusive distribution agreement;
- 3.4. selective distribution agreement; and
- 3.5. franchise agreement.

4. The exemption referred to in Paragraph 2 of these Regulations applies to a vertical agreement which includes provisions in respect of transfer or utilisation of intellectual property rights if the referred to provisions are not the target of the primary agreement and they are directly or indirectly connected with utilisation or sales of goods.

5. The exemption referred to in Paragraph 2 of these Regulations applies to a vertical agreement if the market share of a seller in the particular market where he sells the goods covered by the agreement does not exceed 30 per cent. This provision does not apply to an exclusive sales (supply) agreement.

6. The exemption referred to in Paragraph 2 of these Regulations applies to an exclusive sales (delivery) agreement if the market share of a seller in the particular market where he purchases goods covered by the agreement, does not exceed 30 per cent.

7. The exemption referred to in Paragraph 2 of these Regulations applies to a vertical agreement entered into between competitors if the agreement does not provide a mutual purchase and the common market share of both participants to the agreement does not exceed 20 per cent and if a purchaser is the producer and distributor of goods; the purchaser, in his or her turn, is a distributor but not a producer of goods competing with goods covered by the agreement.

8. The exemption referred to in Paragraph 2 of these Regulations applies to a vertical agreement regarding non-competition commitment except an agreement regarding:

8.1. direct or indirect non-competition commitment, the term of which is indefinite or exceeds five years. A non-competition agreement, which is renewable automatically after five or more years, shall be considered as a non-competition commitment for an indefinite period of time. The five year restriction period does not apply if the goods covered by the agreement are sold by a purchaser as immovable property, the owner of which is the seller or which is

leased by the seller from the third party not connected with the purchaser, and the term of non-competition commitment does not exceed the period of time during which the purchaser is entitled to utilise such immovable property;

8.2. the direct or indirect duty of a purchaser after the termination of the agreement not to produce, purchase or sell the goods except the case, if such duty applies to the goods that are in competition with goods covered by the agreement, and continuation of the economic activity with the immovable property, in which the purchaser performed the economic activity during the term of the agreement, and there is a necessity to protect know-how which has been transferred by the seller to the purchaser, and the term of such duty is not longer than one year after the termination of the agreement; and

8.3. the direct or indirect duty of a participant of a selective distribution system not to sell goods competing with the goods of the seller.

9. The exemption referred to in Paragraph 2 of these Regulations does not apply if the agreement directly or indirectly contains at least one of the following conditions:

9.1. restriction of the specification of a resale price by a purchaser, except the specification of maximum resale prices or recommendation for resale prices;

9.2. restriction of the territory in which the purchaser may sell the goods covered by the agreement, or restriction of a circle of clients to which the purchaser may sell the goods covered by the agreement;

9.3. restriction of sales to consumers by such a participant of a selective distribution system which performs economic activity at the level of the retail trade, except the restriction of sales by such participant from a place at which he or she has not been authorised to sell by the other participants of the system;

9.4. restriction of mutual sales between the participants of a selective distribution system operating at a same or different levels of distribution; and

9.5. restriction on the possibilities of a seller (who supplies goods to a purchaser for the production of goods) to sell the goods as spare parts to consumers or to providers of repair or other services which the purchaser has not approved as the providers of repair or other services for the goods thereof.

10. The exception referred to in Paragraph 9.2 of these Regulations does not apply to the following restrictions:

10.1. the restriction of active sales by a purchaser into exclusive territories or to the exclusive client groups, which the seller has reserved for himself or granted to another purchaser, provided such restriction does not apply to the sales performed by the clients of the purchaser;

10.2. the restriction that applies to the sales of goods to consumers by a purchaser performing economic activity at the level of the retail trade;

10.3. the restriction that applies to sales of goods to unauthorised distributors by the participant of a selective system; and

10.4. the restriction of possibilities for a purchaser to sell goods, which a seller has sold to the purchaser for the production of goods, to clients who can utilise them for the production of goods of the same type as produced by the seller.

11. The exemption restrictions referred to in Paragraph 8 of these Regulations do not apply to a vertical agreement if it has been entered into between market participants whose market share in a certain market does not exceed 10 per cent.

12. The Competition Council is entitled to prohibit vertical agreements, which in accordance with these Regulations have been exempted from the agreement prohibition referred to in Section 11, Paragraph one of the Competition Law, if the consequences of the agreement do not comply with the conditions of Section 11, Paragraph two of the Competition Law or the effect of a parallel network of similar vertical agreements (which have been entered into between the competing sellers or purchasers) hinders, restricts or distorts the competition in a particular market, or similar vertical agreements comprise more than 50 per cent of the particular market.

Prime Minister

I. Emsis

Acting for the Minister for Economics,
Minister for Finance

O. Spurdziņš