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Republic of Latvia Cabinet Regulation No: 52

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Regulations on the Exemption of Franchise Agreements from the Prohibition of Agreements by the Competition Law

Issued pursuant to
Section 15, Paragraph Four, Clause 1 of
the Competition Law

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I. General Provisions

1. Terms used in these Regulations:
 - 1.1. franchise agreement - an authorisation agreement between two enterprises (companies), whereby one enterprise (company), the franchisor, grants the other enterprise (company), the franchisee, in exchange for direct or indirect financial consideration, the right to use the totality of intellectual property rights (especially trade names, trademarks, shop sign-boards, designs and know-how) for the sale of specific types of goods (hereinafter - goods covered by the agreement) or the provision of services (hereinafter - services covered by the agreement) to consumers in a specific geographic territory (hereinafter - territory covered by the agreement);
 - 1.2. premises covered by the agreement - commercial premises, the utilisation of which is specified in the franchise agreement, or the premises utilised for the organisation of the operation of the means of transport specified in the franchise agreement (hereinafter - means of transport);
 - 1.3. goods of the franchisor - goods which are produced by the franchisor or which are produced according to its instructions, or which have the name or trademark of the franchisor thereon;
 - 1.4. know-how - the practical knowledge of a franchisor, acquired through non-patented experience, which is:
 - 1.4.1. substantial, if, at the time of entering into the agreement, the information concerned is available for utilisation in order to ensure a competitive position for the franchisee or to help it enter a market;
 - 1.4.2. identified, if the information concerned is sufficient in order to verify its sales potential and compliance with the criteria of secrecy; and
 - 1.4.3. a commercial secret, if the information concerned as a whole or precisely is not generally known or is difficult to access and its owner takes the necessary measures to keep the information mentioned secret.
2. These Regulations determine the agreements- - franchise agreements -between individual enterprises (companies) (hereinafter - enterprise) which are exempted from the prohibition of agreements set out in the first Paragraph of Section 15 of the Competition Law, having regard to the second Paragraph of Section 15 of the aforementioned Law, if they comply with the requirements set forth in these Regulations. Such agreements are permitted without a notice to

the Competition Council regarding them.

3. Franchise agreements shall include the following conditions:
 - 3.1. that the franchisee use a unified trade name or shop sign-boards as well as a uniform presentation of the premises covered by the agreement and the means of transport covered by the agreement;
 - 3.2. that the franchisor transfer know-how to the franchisee, which is significant for the sale of goods or provision of services, (in particular, for the display of goods, the involvement of goods in the provision of services, for the application of marketing methods, and administration and financial management; and
 - 3.3. during the term of the franchise agreement, that the franchisor provide continued commercial and technical assistance to the franchisee.

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II. Exemption from the Prohibition of Agreements

4. Franchise agreements which are entered into by two enterprises and which provide for one or more of the following obligations restricting competition shall be exempted from the prohibition of agreements:
 - 4.1. obligations of the franchisor in the territory covered by the agreement:
 - 4.1.1. to not enter into franchise agreements with third parties;
 - 4.1.2. to not exercise intellectual property rights, which in accordance with the franchise agreement have been transferred to the franchisee, or not to market the goods covered by the agreement or not to provide services covered by the agreement; or
 - 4.1.3. to not supply the goods covered by the agreement to third parties;
 - 4.2. obligations of the franchisee:
 - 4.2.1. to utilise the intellectual property rights, received in accordance with the franchise agreement, only in the premises covered by the agreement;
 - 4.2.2. to not seek consumers for the goods or services covered by the agreement outside the territory specified by the franchise agreement; or
 - 4.2.3. to not produce, sell or utilise in the services to be provided, goods which are competitive to the goods covered by the agreement.
5. Franchise agreements which provide for the following obligations of the franchisee (in so far as these are necessary to protect the intellectual property rights of the franchisor or to maintain the reputation of the franchisor and the identity of the marketing network) shall be exempted from the prohibition of agreements:
 - 5.1. to sell, or utilise in the provision of the services covered by the agreement, exclusive goods which comply with the minimum requirements as to quality determined by the franchisor;
 - 5.2. to sell, or use for the provision of the services covered by the agreement, the goods produced by the franchisor or by an enterprise specified by it, which comply with the quality requirements determined by the franchisor;
 - 5.3. to not engage (directly or indirectly) in the sale of goods covered by the agreement or the provision of services covered by the agreement in territories in which the relevant franchisee could compete with another franchisee of the franchisor, or the franchisor. In the franchise agreement, the observation of the aforementioned obligations, within the territory of the franchise agreement, may also be provided for after the expiration of the term of the franchise agreement, but for not longer than a year;
 - 5.4. to not acquire the shares, stock, or securities of competing enterprises, which could give the franchisee the right to influence the economic activities of such enterprises;
 - 5.5. to sell goods covered by the agreement to other franchisees of the franchisor, consumers and sellers utilising only the channels of distribution of the producer of the goods concerned or of

an enterprise authorised by it;

- 5.6. to promote the sale of goods covered by the agreement and the provision of services covered by the agreement: to offer for sale at least the specified minimum amount of goods, to achieve at least the specified minimum turnover, as well as to carry out advance planning, to maintain specific reserves and to provide marketing and guarantee services; or
- 5.7. to cover a specific portion of the advertising expenses incurred by the franchisor and to utilise advertising according to the recommendations of the franchisor.
6. Franchise agreements which provide for the following obligations of the franchisee shall be exempted from the prohibition of agreements:
 - 6.1. to not disclose to third parties the know-how obtained from the franchisor (also after the expiration of the franchise agreement);
 - 6.2. to inform the franchisor of experience obtained in exercising the rights set out in the franchise agreement and to grant the franchisor and its other franchisees non-exclusive licences for the utilisation of the know-how relating to the experience mentioned;
 - 6.3. to inform the franchisor if its intellectual property rights are infringed, to take appropriate action against the infringers or to support the action taken by the franchisor against the infringers;
 - 6.4. to not utilise know-how licensed by the franchisor for purposes not related to the franchise agreement (also after the expiration of the franchise agreement);
 - 6.5. to ensure training for the employees of the franchisee in courses organised by the franchisor;
 - 6.6. to apply the commercial methods and variations thereof developed by the franchisor, as well as to use the intellectual property rights;
 - 6.7. to prepare the premises covered by the agreement and the means of transport covered by the agreement in compliance with the provisions of the franchisor;
 - 6.8. to allow the franchisor to inspect the premises covered by the agreement and the means of transport covered by the agreement, as well as the goods sold, the services provided, the inventory and reports;
 - 6.9. to not move the premises covered by the agreement without the consent of the franchisor; or
 - 6.10. to not transfer the rights and obligations set out in the franchise agreement to another enterprise, without the consent of the franchisor.
7. If, due to special circumstances, the obligations mentioned in Paragraph 6 of these Regulations may be prohibited pursuant to the first Paragraph of Section 15 of the Competition Law, the prohibition of agreements is not applicable to them if and when the franchise agreement does not provide for any of the obligations mentioned in Paragraph 4 of these Regulations.

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III. Limitations on Exemptions from the Prohibition of Agreements

8. Exemption from the prohibition of agreements is applicable if the franchise agreement provides for the following conditions:
 - 8.1. the franchisee is freely able to obtain the goods covered by the agreement from other franchisees of the franchisor as well as from the authorised distributors in other distribution networks; or
 - 8.2. on the goods covered by the agreement and in providing the services covered by the agreement, the franchisee indicates that it is an independent enterprise. The indication mentioned shall not be similar to the marks of the franchisor.
9. Exemption from the prohibition of agreements is not applicable if at least one of the following conditions is attributable to the franchise agreement:
 - 9.1. that producers of goods or providers of services, which are identical or interchangeable, enter

into a mutual franchise agreement in respect of such goods or services;

- 9.2. that the franchisee be denied the opportunity to obtain goods of the same quality as the goods offered by the franchisor, except for the cases set out in Sub-paragraphs 4.2.4 and 5.2 of these Regulations;
- 9.3. that the franchisee have the obligation to sell, or to utilise in the provision of services, goods produced by the franchisor or by its designated enterprises, and the franchisor refuses without an objective reason (not in order to protect its industrial or intellectual property rights, or to maintain its reputation and to unify the identity of its network) to accept the supply of the goods concerned from other producers which would have been selected by the franchisee, except in the cases mentioned in Sub-paragraph 4.2.3 of these Regulations;
- 9.4. that the franchisee be denied the opportunity to utilise the licensed know-how after the expiration of the term of the franchise agreement (if and when it has become generally known and accessible), in order to force the franchisee to enter into a new franchise agreement;
- 9.5. that the franchisee be directly or indirectly restricted by the franchisor in setting the prices for the goods and services covered by the agreement (the franchisor may recommend selling prices); and
- 9.6. that the franchisor prohibit the franchisee from contesting intellectual property rights which were the subject matter of the franchise agreement. In the case mentioned, the franchisor may terminate the franchise agreement.

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IV. Notice of Agreement

10. If the franchise agreement complies with the requirements of Paragraph 8 of these Regulations, and provides for obligations which restrict competition which are not mentioned in Paragraph 4 and 7 of these Regulations, but does not provide for the obligations mentioned in Paragraph 9 of these Regulations, the participants to the agreement shall submit notice to the Competition Council regarding the franchise agreement in accordance with specified procedures. The Competition Council may permit such an agreement for a specific period.
11. The notice mentioned in Paragraph 10 of these Regulations shall contain a reference to Paragraph 10 of these Regulations and complete and true information regarding the relevant franchise agreement.
12. If, after examining the notice, the Competition Council decides that the prohibition of agreements is applicable to the relevant franchise agreement, it shall further examine the notice in accordance with the procedures by which notices regarding agreements among market players are to be examined.
13. Information which the Competition Council has obtained pursuant to Paragraph 10 of these Regulations shall be kept confidential and shall be used only for the evaluation of the relevant franchise agreement.
14. The Competition Council may prohibit the granting of an exemption from the prohibition of agreements, if a franchise agreement is not in compliance with the conditions set out in the second Paragraph of Section 15 of the Competition Law, particularly, if the franchise agreement is in effect in a specific territory and:
 - 14.1. commencing of operations in the specific market or competition therein is significantly restricted by the similar franchise agreements entered into by the competing producers and distributors;
 - 14.2. there are no goods and services significantly competitive with the goods and services covered by the agreement in Latvia;
 - 14.3. the contracting parties, or one of them, (directly or by using the services of middlemen) hinder consumers who are not located in the territory of the franchise agreement in obtaining goods covered by the agreement or receiving services covered by the agreement, or offer different specifications for the relevant goods or services in different regions in order to divide markets;
 - 14.4. the franchisees engage in concerted practices in regard to the selling prices of the goods and

- services covered by the agreement; or
- 14.5. the franchisor, without objective reason (not in order to protect its intellectual property rights, to maintain the reputation and identity of its network, or to investigate that the franchisee is complying with the requirements of the franchise agreement) uses its right to control the premises and means of transport covered by the agreement, or does not permit the franchisee to change the premises specified by the agreement or transfer the intellectual property rights determined in the franchise agreement.
 15. If the Competition Council determines that the conditions of Paragraph 14 of these Regulations apply to the relevant franchise agreement, it shall request that the contracting parties submit a notice regarding the agreement and shall examine it in accordance with the specified procedures.
 16. The prohibition of agreements is not applicable in Latvia if the franchise agreement concerned affects trade between Latvia and the European Union Member States and if it conforms with the requirements of the relevant Regulations of the Commission of the European Communities on exemption from the prohibition of agreements as applicable to franchise agreements pursuant to the third part of Article 85 of the Treaty Establishing the European Community.
 17. The effect in Latvia of the agreements mentioned in Paragraph 16 of these Regulations shall be evaluated by the Competition Council.

Prime Minister V. Krištopans
Minister for Economics A. Džesers