

THE PROTECTION OF COMPETITION LAWS
(LAWS of 1989 to 2000)

Order made by virtue of section 5(2)

The Council of Ministers in the exercise of its powers conferred upon it by virtue of subsection (2) of section 5 of the Protection of Competition Laws of 1989 to 2000, makes this order.

207 of 1989
111(I) of 1999
87(I) of 2000.

1. This Order shall be cited as the Block Exemptions (Vertical Agreements and Concerted Practices) Order of 2000.

Short title.

2.(1) In this Order, unless the context otherwise requires -

Interpretation

“buyer” includes an undertaking which, under an agreement falling within section 4(1) of the Law sells goods, or services on behalf of another undertaking;

“Commission” means the Commission for the Protection of Competition, within the meaning of section 8 of the Law;

“competing undertakings” means actual or potential suppliers in the same product market;

“intellectual property rights” includes industrial property rights, copyright and neighbouring rights;

“know-how” means a package of non-patented practical information resulting from experience and testing by the supplier, which is secret, substantial and identified.

For the purpose of this definition –

“exclusive supply obligation” means any direct or indirect obligation causing the supplier to sell the goods or services specified in the agreement only to one buyer inside the Republic for the purposes of a specific use or for resale;

“identifiable” means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;

“non-compete obligation” means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier more than 80% of the buyer’s total purchases of the contract goods or services and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding calendar year.

“secret” means that the know-how, as a body or in the precise configuration and assembly of its components, is not generally known or easily accessible;

“substantial” means that the know-how includes information which is indispensable to the buyer for the use, sale or resale of the contract goods or services;

“Law” means the Protection of Competition Laws 1989 to 2000 and any law amending or substituting the same;

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“purchase of goods” includes goods or services which are considered alternative or substitute goods or services to the goods or services mentioned in the contract because of their characteristics/features, prices and use for which are aimed;

“selective distribution system” means a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorized distributors;

“vertical agreement or concerted practice” means the agreement entered into between two or more undertakings each or which operates for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which may purchase, sell or resell certain goods or services;

“vertical restriction” means any competition restriction imposed in the framework of a vertical agreement or a harmonized practice and falls in the field of application of subsection (1) of section 4 of the Law;

(2) For the purposes of this Order, the terms “undertaking”, “supplier” and “buyer” shall include their respective connected undertakings which are -

- (a) undertakings in which a party to the agreement, directly or indirectly -
 - (i) has the power to exercise more than half the voting rights, or
 - (ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
 - (iii) has the right to manage the undertaking’s affairs;

- (b) undertakings which directly or indirectly have over a party to the agreement, the rights or powers listed in subparagraph (a);
- (c) undertakings in which an undertaking referred to in subparagraph (b) has, directly or indirectly, the rights or powers listed in subparagraph (a);
- (d) undertakings in which a party to the agreement together with one or more of the undertakings referred to in subparagraphs (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in subparagraph (a);
- (e) undertakings in which the rights or the powers listed in subparagraph (a) are jointly held by:
 - (i) parties to the agreement or their respective connected undertakings referred to in subparagraphs (a) to (d), or
 - (ii) one or more of the parties to the agreement or one or more of their connected undertakings referred to in sub-subparagraphs (a) to (d), and one or more third parties.

(3) For the purposes of paragraph 5 of this Order, the market share held by the undertakings referred to in sub-subparagraph (e) of subparagraph (2) of this paragraph shall be apportioned equally to undertakings having the rights or the powers listed in sub-subparagraph (a) of subparagraph (2) of this paragraph.

(4) Terms not otherwise defined in this Order have, unless otherwise follows from the text, the meaning ascribed to them by the Law.

Field of application.

3. This Order does not apply in the case of vertical agreements of which the object falls in the field of application of other Block Exemption Order.

4.(1) In accordance with subsection (1) of section 5 of the Law and subject to the provisions of this Order, subsection (1) of section 4 of the Law declared inapplicable to vertical agreements or concerted practices:

Exemptions relating to vertical agreements.

Provided that the said exemption shall apply to the extent that such agreements contain restrictions of competition falling within the scope of subsection (1) of section 4 of the Law.

(2) The exemption provided for in subparagraph (1) of this paragraph shall apply to vertical agreements entered into between an association of undertakings and its members, or between such an association and its suppliers, only if all its members are retailers of goods and if no individual member of the association, together with its connected undertakings, has a total annual turnover exceeding one million pounds:

Provided that the vertical agreements entered into by such associations shall be covered by this order without prejudice to the application of Article 4 of the Law to horizontal agreements concluded between members of the association or decisions adopted by the association.

(3) The exemption provided for in subparagraph (1) of this paragraph shall apply to vertical agreements containing provisions related to the assignment to the buyer or use by the buyer of intellectual property rights, provided that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers:

Provided that the exemption for the purposes of this subparagraph applies on condition that, in relation the goods or services referred to in the contract, those provisions do not contain restrictions of competition having the same object or effect as vertical restraints which are not exempted under this Order.

(4) The exemption provided for in subparagraph (1) of this paragraph shall not apply to vertical agreements entered into between competing undertakings.

However, the exemption shall apply where competing undertakings enter into a non-reciprocal vertical agreements and –

- (i) the buyer has a total annual turnover not exceeding two million pounds, or
- (ii) the supplier is a manufacturer and a distributor of goods, while the buyer is a distributor not manufacturing goods competing with the contract goods, or
- (iii) the supplier is a provider of services at several levels of trade, while the buyer does not provide competing services at the level of trade where it purchases the contract services.

5.(1) Subject to subparagraph (2) of this paragraph, the exemption provided for in paragraph 4 of this Order shall apply on condition that the market share held by the supplier does not exceed 30% of the relevant market on which it sells the contract goods or services.

Restriction to the application of the Exemption.

(2) In the case of vertical agreements containing exclusive supply obligations, the exemption provided for in paragraph 4 of this Order shall apply on condition that the market share held by the buyer does not exceed 30% of the relevant market on which it purchases the contract goods or services.

6. The exemption provided for in paragraph 4 of this Order shall not apply to vertical agreements which directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object –

Restriction to the application of the Exemption.

- (a) the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier's imposing a maximum sale price or recommending a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties, or
- (b) the restriction of the territory into which, or of the customers to whom, the buyer may sell the contract goods or services, except -
 - (i) the restrictions of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer;
 - (ii) the restrictions of sales to end users by a buyer operating at the wholesale level of trade,
 - (iii) the restrictions of sales to unauthorized distributors by the members of a selective distribution system, and
 - (iv) the restrictions of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;
- (c) the restriction of active or passive sales to end users by members of a selective distribution system operating at the retail level of trade, without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorized place of establishment;

- (d) the restriction of cross-suppliers between distributors within a selective distribution system, including between them distributors operating at different levels of trade;
- (e) the restriction agreed between a supplier of components and a buyer of them who incorporates those components, which limits the supplier or other service providers not entrusted by the buyer with the repair or servicing of its goods.

Restriction to the application of the Exemption.

7. The exemption provided for in paragraph 4 of this Order shall not apply to any of the following obligations contained in vertical agreements:

- (a) any direct or indirect non-compete obligation, the duration of which is indefinite or exceeds five years:

Provided that a non-compete obligation which is tacitly renewable beyond a period of five years is deemed to have been concluded for an indefinite duration:

Provided further that the time limitation of five years shall not apply where the contract goods or service are sold by the buyer from premises and land owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete obligation does not exceed the period of occupancy of the premises and land by the buyer;

- (b) any direct or indirect obligation causing the buyer after termination of the agreement, not to manufacture, purchase, sell or resell goods or services, unless such obligation -

- (i) relates to goods or services which compete with the contract goods or services, and
- (ii) is limited to the premises and land from which the buyer has operated during the contract period, and
- (iii) is indispensable to protect know-how transferred by the supplier to the buyer,

and provided that the duration of such non-compete obligation is limited to a period of one year after termination of the agreement. This obligation is without prejudice to the possibility of imposing a restriction which is unlimited in time on the use and disclosure of know-how which has not entered the public domain;

- (c) any direct or indirect obligation causing the members of a selective distribution system not to sell goods or services under the brands of particular competing suppliers.

8. The Commission may withdraw the benefit of the application of this Order where it finds in any particular case, that vertical agreements to which this Order applies nevertheless have effects which are incompatible with the conditions provided in subsection (1) of section 5 of the Law, and in particular in cases where access to the relevant market or competition therein is significantly restricted by the cumulative effect or parallel networks of similar vertical restraints implemented by competing suppliers or buyers.

Withdrawal of the benefit of the Order by the Commission.

Declaration of the order as inapplicable by the Council of Ministers.

9.(1) Where in any particular case vertical agreements to which the exemption provided for in paragraph 4 of this Order applies have effects incompatible with the conditions provided for in subsection (1) of section 5 of the Law, in the Republic or in a part of the territory of the Republic, which has all the characteristics of a distinct geographic market, the Council of Ministers may withdraw the benefit of application of this Order under the same conditions referred to in paragraph 8 of this Order.

(2) Where parallel networks of similar vertical restraints cover more than 50% of the relevant market, the Commission may declare this Order inapplicable to vertical agreements containing specific restraints relating to that market.

(3) The Order issued in accordance with the preceding sub paragraph shall not become applicable earlier than six months following its issuing.

10.(1) The market share of 30% provided for in subparagraph (1) of paragraph 5 of this Order shall be calculated on the basis of the market sales value of the contract goods or services and other goods or services sold by the supplier, which are regarded as interchangeable or substitutable by the buyer, by reason of the products' characteristics, their prices and their intended use. If market sales value data are not available, estimates based on other reliable market information, including market sales volumes, may be used to establish the market share of the undertaking concerned. For the purposes of subparagraph (2) of paragraph 5 of this Order it is either the market purchase value or estimates thereof which shall be used to calculate the market share.

(2) For the application of the market share provided for in paragraph 5 of this Order, the following rules shall apply:

- (a) the market share shall be calculated on the basis of data relating to the preceding calendar year;
- (b) the market share shall include any goods or services supplied to integrated distributors for the purposes of sale;
- (c) if the market share is initially not more than 30% but subsequently rises above that level without exceeding 35%, the exemption provided for in paragraph 4 of this Order shall continue to apply for a period of two consecutive calendar years following the year in which the 30% market, share threshold was first exceeded;
- (d) if the market share is initially not more than 30% but subsequently rises above 35%, the exemption provided for in paragraph 4 shall continue to apply for one calendar year following the year in which the level of 35% was first exceeded;
- (e) the benefit of subparagraph (c) and (d) may not be combined so as to exceed a period of two calendar years.

Calculation of
annual turnover.

11.(1) For the purpose of calculating the total annual turnover within the meaning of subparagraphs (2) and (4) of this Order, the turnover achieved during the previous financial year by the relevant party to the vertical agreement and the turnover achieved by its connected undertakings in respect of all goods and services excluding all taxes and other duties, shall be added together. During this calculating, no account shall be taken of dealings between the party to the vertical agreement and its connected undertakings or between its connected undertakings.

(2) The exemption provided for in paragraph 4 of this Order shall remain applicable where, for any period of two consecutive financial years, the total annual turnover is exceeded by no more than 10%.

Abolition of
Orders. Official
Gazette of the
Republic. Part
III. 26.1.1996 and
30.4.1998.

12. By the publication of this Order in the Official Gazette of the Republic the Exclusive Purchasing Agreements (Block Exemption) Order of 1995, the Exclusive Distribution Agreements (Block Exemptions) Order of 1995 and the Block Exemptions (Franchise Agreements) Order of 1998 are abolished.