

Pursuant to Article 13, Paragraph 3 of the Law on Protection of Competition ("Official Gazette of the Republic of Serbia", no. 51/09) and Article 42, Paragraph 1 of the Law on Government ("Official Gazette of the Republic of Serbia", no. 55/05, 71/05 – corr., 101/07 and 65/08),

the Government adopts the following

**REGULATION
ON AGREEMENTS ON SPECIALIZATION BETWEEN UNDERTAKINGS
OPERATING ON THE SAME LEVEL OF PRODUCTION OR DISTRIBUTION
CHAIN EXEMPTED FROM PROHIBITION**

*Regulation is published in the "Official Gazette of the Republic of Serbia", no. 11/2010,
dated March 5, 2010*

Subject

Article 1

This Regulation shall stipulate the categories of agreements on specialization between undertakings operating on the same level of production or distribution chain (hereinafter: agreements on specialization), and more closely prescribe specific conditions under which such agreements may be exempted from prohibition.

Definition

Article 2

Particular terms used in this Regulation shall have the following meaning:

- 1) 'party to the agreement' means a party to the agreement and its affiliated undertakings;
- 2) 'distributor' means a buyer who is purchasing product for resale or processing purpose;
- 3) 'competing undertaking' means an undertaking operating on the same relevant market (actual competitor), or undertaking which could within a short period of time be likely to undertake necessary additional investments or other necessary switching costs to enter the relevant market in case of a small but permanent increase in prices (potential competitor);
- 4) 'products' means goods and/or services, including semi-products;
- 5) 'production' means production of goods and rendering of services, including production performed by a sub-contractor – the cooperator;
- 6) 'intellectual property rights' means rights of industrial property, copyrights and neighboring rights.

Agreements on specialization exempted from prohibition

Article 3

Agreements on specialization concluded between two or more independent undertakings operating on the same level of production or distribution chain that regulate conditions under which those undertakings specialize in the production, shall be exempted from prohibition, and particularly:

- 1) unilateral specialization agreements by virtue of which one party to the agreement commits to cease production of relevant products or to refrain from production of such

products, and to purchase relevant products from another party to the agreement, whereas the other party to the agreement commits to produce and sell such products;

- 2) reciprocal specialization agreements, by virtue of which two or more parties to the agreement commit to cease or refrain from producing certain but different products, and to purchase these products from other parties to the agreement who commit to sell them;
- 3) joint production agreements, by virtue of which two or more parties to the agreement commit to jointly produce certain products.

The exemption from prohibition of agreements referred to in Paragraph 1 of this Article, shall be applied to individual provisions contained in the agreements, which do not constitute the primary goal of such agreements, but are directly related and necessary for their implementation, such are those concerning the assignment or use of intellectual property rights.

Conditions for exemption of agreements on specialization

Article 4

Agreements on specialization referred to in Article 3, Paragraph 1 of this Regulation shall be exempted from prohibition if, along with conditions contained in Article 11 of the Law, fulfill the following conditions, particularly that:

- 1) parties to the agreement accept obligation related to exclusive sale, i.e. exclusive purchase in the context of a unilateral or reciprocal specialization agreement or agreement on joint production, or
- 2) parties to the agreement accept obligation not to independently offer products in market that are the object of the agreement on specialization, but to participate in a joint distribution or to agree to appoint a third party to sell such product, under the condition that the third party is not a competing undertaking.

The exemption of agreement on specialization referred to in Paragraph 1 of this Article shall be applied under the condition that the combined share of parties to the agreement on the relevant market does not exceed 20%.

Agreements on specialization for production of totally new product/services on market shall be exempted from prohibition for the first three years from the date of their conclusion or application, if they fulfill conditions referred to in Article 11 of the Law.

Restrictions relating to content of agreements on specialization

Article 5

Agreements on specialization shall not be exempted from prohibition if they directly or indirectly, in isolation or combination with other factors under the control of parties to the agreement, contain restrictions aimed at:

- 1) price fixing when selling the products to third parties;
- 2) limitation of output or sales; or,
- 3) allocation of markets or consumers.

As an exemption from Paragraph 1 of this Article, agreements on specialization may contain provisions regulating:

- 1) quantity of products in unilateral or reciprocal specialization agreements, or production capacity or production volume in joint production agreement;
- 2) object of sale and price charged to direct buyers in agreement on joint production.

Agreements on specialization shall not be exempted from prohibition if there are several agreements on specialization on the relevant market that due to cumulative effect fail to fulfill

conditions for exemption from prohibition referred to in Article 11 of the Law and this Regulation.

Relevant market share threshold

Article 6

Market share of parties to the agreement shall be established on the basis of generated sales turnover, i.e. value of procurement or volume of production of the contract product.

Market share referred to in Paragraph 1 of this Article shall be calculated on the basis of data referring to calendar year preceding the year in which the agreement was concluded.

Market share of parties to the agreement referred to in Paragraph 1 of this Article shall also include a market share of their affiliated undertakings established and calculated in a manner stated in Paragraphs 1 and 2 of this Article.

Duration of exemption

Article 7

If the combined market share of parties to the agreement at the time of concluding agreement does not exceed 20%, and subsequently increases but not exceeding 25%, the exemption shall apply for the duration of two consecutive calendar years following the year in which market share saw the first-time increase in excess of 20%.

If the combined market share of parties to the agreement at the time of concluding agreement does not exceed 20%, and subsequently increases exceeding 25% but not more than 30%, the exemption shall also apply to for the duration of six months following the period in which market share saw the first-time increase in excess of 25%.

Duration of exemption referred to in Paragraph 1 and 2 of this Article cannot be accumulated for the extension of duration of exemption to more than two calendar year period.

Transitional and final provisions

Article 8

Agreements on specialization concluded prior to the date of coming into force of this Regulation, shall be harmonized with provisions of this Regulation within the period of three months from the date of coming into force.

Regarding agreements on specialization concluded prior to the date of coming into force of this Regulation and harmonized with its provisions within the period referred to in Paragraph 1 of this Article, the market share shall be calculated on the basis of data from calendar year preceding the year this Regulation came into force.

Article 9

This Regulation shall come into force on the eight day from the date of publication in the "Official Gazette of the Republic of Serbia".

No.
Belgrade

GOVERNMENT

DEPUTY PRIME MINISTER
