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Republic of Latvia

Cabinet

Regulation No. 797

Adopted 29 September 2008

## **Regulations Regarding Non-subjection of Certain Vertical Agreements to the Prohibition of the Agreement Specified in Section 11, Paragraph One of the Competition Law**

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

1. These Regulations prescribe:

1.1. separate vertical agreements between market participants, which do not significantly affect competition; and

1.2. the criteria according to which certain vertical agreements between market participants are not subjected to the prohibition of the agreement specified in Section 11, Paragraph one of the Competition Law (hereinafter – prohibition of agreement).

2. Terms used in these Regulations:

2.1. vertical agreement – an agreement, which is entered into by and between two or more market participants, each of whom performs economic activities at a different level of production or distribution, and which is related to the purchasing or selling provisions of the contract goods;

2.2. contract goods – goods or services, which are the subject of a vertical agreement;

2.3. agreement on exclusive supply (distribution) – vertical agreement, according to which a supplier directly or indirectly undertakes to sell contract goods to only one purchaser in the particular territory for specific use or resale;

2.4. agreement on selective distribution – vertical agreement, according to which a supplier directly or indirectly undertakes to only sell contract goods to distributors selected according to specific criteria and these distributors undertake not to sell the contract goods to unauthorised distributors;

2.5. non-compete obligation – within the meaning of these Regulations – vertical agreement, according to which a purchaser directly or indirectly undertakes not to produce, purchase or sell goods competing with the agreement goods, or directly or indirectly undertakes to purchase more than 80 per cent of the total purchase amount of contract goods or competing goods thereof in the particular market from the supplier or from a market participant indicated by the supplier during the preceding calendar year;

2.6. intellectual property rights – within the meaning of these Regulations – industrial property rights, copyright and neighbouring rights;

2.7. supplier – within the meaning of these Regulations – a producer or another market participant who sells contract goods to a purchaser;

2.8. purchaser – a market participant who purchases goods for a specific use or resale thereof;

2.9. goods, which are purchased for a specific use – within the meaning of these Regulations – goods, which are bought by a purchaser from a supplier in order to use them for the production of own goods, including goods, which are sold and purchased for lease to third parties;

2.10. active sale – active actions of a distributor of goods, the purpose of which is to sell goods to clients in the exclusive territory of another distributor or in an exclusive client group, for example, using direct mail and visits, arranging trade sites or with the aid of other measures;

2.11. passive sale – selling goods to individual clients upon their request (including delivery of goods to such clients), without performing measures directed towards the creation or increase of demand for goods in exclusive client groups or among the clients of the exclusive territory;

2.12. end user – within the meaning of these Regulations – a natural or legal person who purchases contract goods for personal use, not resale; and

2.13. agreement on reciprocal distribution – within the meaning of these Regulations – a contract between competitors, including producers and service providers, according to which participants of the agreement mutually undertake to distribute the goods produced or supplied by the other participant of the agreement.

3. The vertical agreement shall not be subjected to the prohibition of agreement if the market share of each participant of the agreement in the particular market does not exceed 10 per cent and the agreement does not contain the restrictions of competition referred to in Paragraph 8 of these Regulations.

4. The vertical agreement shall not be subjected to the prohibition of agreement if the market share of a supplier in the particular market does not exceed 30 per cent. The referred to condition shall not apply to the agreement on exclusive supply (distribution).

5. If the vertical agreement provides for exclusive supply (distribution), it shall not be subjected to the prohibition of agreement provided that the market share of a purchaser in the particular market, in which it purchases contract goods, does not exceed 30 per cent.

6. If the market share referred to in Paragraphs 3 and 4 of these Regulations does not reach 30 per cent at the time of entering into agreement and increases after entering into agreement, not exceeding 35 per cent, such vertical agreement shall not be subjected to the prohibition of agreement for the two subsequent calendar years following the year when the market share exceeded 30 per cent for the first time.

7. If the market share referred to in Paragraphs 3 and 4 of these Regulations does not reach 30 per cent at the time of entering into agreement and increases after entering into agreement, exceeding 35 per cent, such vertical agreement shall not be subjected to the prohibition of agreement for one subsequent calendar year following the year when the market share exceeded 30 per cent for the first time.

8. The vertical agreement shall be subjected to the prohibition of agreement if the purpose of the agreement directly or indirectly, separately or together with other conditions, which may be influenced by the participants of the agreement, is:

8.1. to restrict the opportunity of a purchaser to determine the sales price. A supplier is entitled to determine the maximum or recommended sales price provided that the participants of the agreement do not thus covertly introduce a specific or minimum sales price with their actual action;

8.2. to restrict the circle of clients or the territory, in which a purchaser is entitled to sell contract goods, except:

8.2.1. a prohibition to perform active selling in the exclusive territories or to exclusive groups of clients, which the supplier has reserved for himself or has assigned to another purchaser if such a prohibition is not applied to the selling performed by clients of the purchaser;

8.2.2. a prohibition to a purchaser operating at the level of wholesale trade to sell contract goods to end user;

8.2.3. a prohibition to participants of the selective distribution network to sell contract goods to unauthorised distributors; or

8.2.4. a prohibition to sell such components, which are supplied for the assembling of finished goods, to such clients who might use them for the making of the same type of goods as produced by the supplier;

8.3. a prohibition to participants of the selective distribution network who perform economic activities at the retail trade level to perform active or passive selling to end users unless such activities are not performed from an unauthorised trade site;

8.4. a prohibition to participants of the selective distribution network (also participants who perform economic activities at different levels of trade) to perform mutual supplies;

8.5. a prohibition to a supplier to sell components as spare parts to an end user and to such providers of repairs and other maintenance services, whom a purchaser who uses such components for assembling of finished goods has not authorised to repair or service goods thereof.

9. Vertical agreements shall not be subjected to the prohibition of agreement if they provide for the transfer of intellectual property rights to a purchaser if it is not the basic purpose of the agreement and the transfer of intellectual property rights is directly related to the utilisation or selling of goods. Such vertical agreements shall not be subjected to the prohibition of agreement provided that the conditions of intellectual property rights in relation to contract goods do not include restriction of competition with a purpose or consequences similar to the conditions of a vertical agreement, which are subjected to the prohibition of agreement.

10. Vertical agreements between an association of market participants and members thereof or between an association of market participants and suppliers thereof shall not be subjected to the prohibition of agreement if all participants thereof are retail traders and the market share for any of the participants of the association of market participants together with related undertakings in the particular market or in the respective purchase market does not exceed 10 per cent.

11. Vertical agreements, which are entered into between competitors, shall not be subjected to the prohibition of agreement if they do not provide for reciprocal distribution and at least one of the following conditions:

11.1. the market share of a purchaser in the particular market does not exceed 10 per cent;

11.2. a supplier is a producer and distributor of goods and a purchaser is a distributor, not a producer of goods competing with contract goods; or

11.3. a supplier is a service provider at several trade levels and a purchaser does not offer competing services at the trade level, at which the purchaser purchases the contract service.

12. Vertical agreements shall be subjected to the prohibition of agreement if the agreement contains at least one of the following conditions:

12.1. a direct or indirect non-competition commitment, the term of which is unspecified or exceeds five years. A non-competition commitment to be automatically renewed after five or more years shall be deemed a non-competition commitment for an unspecified term. Restrictions of a non-competition commitment in relation to time shall not be applied to the following cases:

12.1.1. if a purchaser sells contract goods from premises or land belonging to a supplier or leased by the supplier from a third party that is not related to the purchaser. In such case the non-competition commitment shall not exceed the term in which the purchaser uses the referred to premises and land;

12.1.2. in franchise agreements, within the framework of which the non-competition commitment is objectively necessary in order to maintain the common identity of the brand and the reputation of the franchise network;

12.2. a direct or indirect prohibition to a purchaser to produce, purchase or sell goods after termination of the agreement, except in the case if such prohibition:

12.2.1. applies to the production, purchase or selling of goods competing with contract goods;

12.2.2. is limited with premises or land, in which a purchaser performs economic activities during operation of the contract if the purchaser also continues to use these premises or land after termination of the agreement;

12.2.3. is necessary in order to protect the know-how transferred by a supplier to the purchaser; or

12.2.4. does not exceed a time period of one year from the time of expiry of the agreement, except for cases if participants of the agreement determine a prohibition for an unspecified period of time in relation to the utilisation and disclosure of such know-how to third parties, which has not been publicly used or revealed in any other way;

12.3. a direct or indirect prohibition to a participant of the selective distribution network to sell branded goods of competing suppliers.

13. The Competition Council need not be informed regarding the vertical agreement, which is not subjected to the prohibition of agreement.

14. The Competition Council is entitled to prohibit a vertical agreement already entered into if the consequences of the agreement do not conform to the conditions referred to in Section 11, Paragraph two of the Competition Law or an impact of parallel network of similar vertical agreements (which are entered into between competing sellers or purchasers) hinders, restricts or distorts competition in the particular market, or similar vertical agreements cover more than 50 per cent of the particular market.

Prime Minister I. Godmanis

Minister for Economics K. Gerhards