

Grant of Permission to Enter into Agreements of Certain Categories which Restrict or May
Restrict Free Competition (Block Exemptions)

(Repealed - 25.09.2001 entered into force 01.10.2001, in force until 01.04.2004 - RT I 2001, 78, 461)

Government of the Republic Regulation No. 111 of 23 March 1999

(RT* I 1999, 35, 451),

entered into force 8 April 1999.

Pursuant to subsection 7 (1) of the Competition Act (RT I 1998, 30, 410), the Government of the Republic resolves:

1. To grant block exemptions in respect of the following categories of agreements which restrict or may restrict free competition:

- 1) franchise agreements (annexed);
- 2) exclusive purchasing agreements (annexed);
- 3) exclusive distribution agreements (annexed);
- 4) motor vehicle distribution and servicing agreements (annexed).

2. Agreements which benefit from block exemptions specified in clause 1 of this Regulation may remain in force until 1 April 2004.

3. This Regulation shall remain in force until 1 April 2004.

Annex 1

to Government of the Republic Regulation

No. 111 of 23 March 1999

Block Exemption in respect of Franchise Agreements

1. Permission is hereby granted to enter into franchise agreements (hereinafter agreements) to which only two undertakings – the franchisor and the franchisee – are party, which agree as follows:

- 1) the franchisor shall grant the franchisee the right to exploit a package of industrial or intellectual property rights (hereinafter franchise) relating to trade marks, trade names or

samples, shop signs, copyrights, know-how, patents or designs thereof for the purposes of marketing specified types of goods and/or providing services;

2) the franchisee shall exploit the franchise only in accordance with the provisions of the agreement.

2. This “Block Exemption in respect of Franchise Agreements” (hereinafter block exemption) also applies to master franchise agreements between two undertakings, i.e. to agreements between franchisor and master franchisee or between master franchisee and franchisee in which the master franchisee is an undertaking which has the right to enter into agreements with franchisees and to act as franchisor for them within the territory determined by the master franchise agreement.

3. In addition to clause 1 of this block exemption, the following obligations which restrict or may restrict free competition may be included in the agreement in respect of the franchisor:

1) to communicate know-how to the franchisee and provide commercial or technical assistance to the franchisee during the life of the agreement;

2) not to grant the right to exploit all or part of the franchise to another undertaking within the contract territory;

3) not to itself exploit the franchise which is the object of the agreement or to market competing goods or provide competing services within the contract territory, i.e. goods or services which are identical to or considered by consumers as interchangeable in view of their price, quality, technical characteristics, conditions of sale and use, characteristics of use and other characteristics;

4) to designate as authorised manufacturers other undertakings proposed by the franchisee unless this restricts the franchise of the franchisor or is harmful to the common identity and reputation of undertakings connected by the same franchise, i.e. the franchise network.

4. In addition to clause 1 of this block exemption, the following obligations which restrict or may restrict free competition may be established in respect of the franchisee:

1) to refrain, outside the contract territory, from seeking customers or entering into agreements using the franchise which is the object of the agreement;

2) not to manufacture, sell or use in the course of the provision of services, goods competing with the goods which are the subject-matter of the franchise, except spare parts or accessories for such goods;

3) not to disclose to third parties or use for purposes other than the exploitation of the franchise agreement the know-how provided by the franchisor;

- 4) to apply the commercial methods devised by the franchisor, especially the equipment of the premises, presentation of the goods and means of transport;
- 5) to allow the franchisor to carry out checks of the contract premises and/or means of transport, including the goods sold and the inventory of the franchisee;
- 6) to pay to the franchisor a specified proportion of its revenue for advertising and carry out advertising to the extent agreed upon with the franchisor;
- 7) to sell, or use in the course of provision of services, goods matching the quality specifications laid down by the franchisor;
- 8) to offer for sale a minimum amount and range of goods which are the subject-matter of the franchise;
- 9) to plan orders in advance, keep minimum stocks of goods and ensure the availability of customer and warranty services to consumers in respect of goods which are the subject-matter of the franchise;
- 10) to communicate to the franchisor and other undertakings of the common franchise network any experience gained concerning the sale and warranty services of the franchisor's goods;
- 11) to inform the franchisor of infringements of the franchise, to take legal action to prevent infringements if possible, and to assist the franchisor in any legal action to prevent infringements;
- 12) to attend or have its staff attend training courses arranged by the franchisor.

5. The franchisee may be held to the obligation specified in subclause 4 3) of this block exemption after termination of the agreement unless the know-how has become generally known or easily accessible other than by breach of an obligation by the franchisee.

6. Subclause 1 2), subclauses 3 2) and 3) and subclauses 4 1) and 2) apply in so far as they are necessary to protect the franchisor's franchise or to maintain the common identity and reputation of the franchise network.

7. This block exemption also applies to agreements which do not include all the obligations listed in clauses 3 and 4 of this block exemption.

8. This block exemption also applies to an agreement on condition that:

1) the franchisee is free to obtain the franchisor's goods from other franchisees;

2) where the franchisee is required to honour guarantees for the franchisor's goods, the obligation shall apply in respect of goods which are the subject-matter of the franchise and are supplied by any member of the franchise network;

3) the franchisee operates as an independent undertaking and does not interfere with the common identity of the franchise network resulting in particular from the common trade mark and the uniform appearance of the contract premises and means of transport.

9. Obligations which restrict or may restrict free competition and which are not permitted under this block exemption shall not be included in agreements, in particular those which limit freedom to determine the prices or conditions of sale or to choose customers, without prejudice to the possibility for the franchisor of recommending sale prices.

10. Reciprocal agreements between manufacturers of competing goods are not permitted under this block exemption.

Annex 2

to Government of the Republic Regulation

No. 111 of 23 March 1999

Block Exemption in respect of Exclusive Purchasing Agreements

I. Exclusive Purchasing Agreements

1. Permission is hereby granted to enter into exclusive purchasing agreements (hereinafter agreements) to which only two undertakings – the supplier and the reseller – are party, which agree as follows:

1) the supplier shall not sell the contract goods or goods which compete with the contract goods, i.e. goods which are identical to or considered by consumers as interchangeable with the contract goods in view of their price, quality, technical characteristics, conditions of sale and use, characteristics of use and other characteristics, in the principal sales area of the other party to the contract (the reseller);

2) the reseller shall purchase the contract goods for resale only from the supplier or from an undertaking which belongs to the same group as the supplier or from an undertaking connected with the supplier through control or from another undertaking designated by the supplier.

2. In addition to clause 1 of this “Block Exemption in respect of Exclusive Purchasing Agreements” (hereinafter block exemption), the following obligations which restrict or may restrict free competition may be included in the agreement in respect of the reseller:

1) not to manufacture or distribute goods which compete with the contract goods;

2) to purchase complete ranges of contract goods (purchase by sets);

3) to purchase minimum quantities of contract goods;

4) to sell the contract goods under trademarks, or packed and presented as specified by the supplier;

5) to take measures for the promotion of sales, in particular to advertise, to maintain a sales network and a stock of goods, to provide customer and guarantee services and to employ staff having specialised or technical training.

3. This block exemption also applies to agreements which do not include all the obligations listed in clause 2 of this block exemption.

4. The following are not permitted under this block exemption:

1) reciprocal agreements between manufacturers of competing goods or inclusion of the terms and conditions of such agreements in other contracts between such manufacturers;

2) agreements concerning more than one type of goods where these are neither by their nature nor according to commercial usage connected to each other.

5. Subclause 4 1) of this block exemption also applies if, instead of one or both manufacturers, an undertaking which is deemed to be the same undertaking as the manufacturer for the purposes of the Competition Act acts as one or both of the parties to the agreement.

6. Obligations which restrict or may restrict free competition and which are not permitted under this block exemption shall not be included in agreements, in particular:

1) those which limit the freedom of a party to the agreement to determine the prices or conditions of sale or to choose customers;

2) those which restrict the supplier upon resale to purchasers outside the contract territory or to other resellers;

3) those which restrict the reseller upon purchase of goods which are not specified in the agreement from other undertakings.

7. Entry into more than one agreement included in Part I, II or III of this block exemption by the same parties simultaneously is prohibited.

II. Beer Supply Agreements

8. Beer supply agreements which benefit from this block exemption may include the following obligations in respect of resellers:

1) in consideration for the according of special commercial or financial advantages by the supplier, to purchase only from the supplier, an undertaking deemed to be the same undertaking as the supplier for the purposes of the Competition Act or another undertaking entrusted by the supplier with the distribution of its goods pursuant to the agreement, certain beers which are

specified in the agreement, or certain beers which are specified in the agreement and other drinks, for resale in premises used for the sale and consumption of drinks and designated in the agreement;

2) the obligation not to sell beers and other drinks which are supplied by other undertakings under the agreement and which are of the same type as the beers or other drinks supplied under the agreement in the premises designated in the agreement;

3) the obligation, in the event that the reseller sells in the premises designated in the agreement beers which are supplied by other undertakings, i.e. undertakings not party to the agreement, and which are of a different type from the beers supplied under the agreement, to sell such beers only in bottles, cans or other small packaging, unless the sale of such beers in draught form is customary or is necessary to satisfy a sufficient demand from consumers;

4) the obligation to advertise goods supplied by other undertakings within or outside the premises designated in the agreement only in proportion to the share of these goods in the total turnover realised in the premises.

9. Subclause 8 1) of this block exemption also applies if a party to a beer supply agreement is an undertaking which represents the supplier and establishes the conditions for the benefit of the supplier.

10. For the purposes of this block exemption, beers or other drinks of the same type are those which are not clearly distinguishable in view of their composition, appearance and taste.

11. A beer supply agreement shall not restrict the right of the reseller to obtain drinks, except beer, supplied under the agreement from other undertakings where these undertakings offer them on more favourable conditions which the supplier does not meet.

12. A beer supply agreement shall not apply for a period of time longer than the period of time designated in the agreement for use of the premises.

13. Subclause 1 2), subclauses 2 2)-5), subclause 4 1) and clauses 5-7 of this block exemption also apply to beer supply agreements.

III. Service-Station Agreements

14. Service-station agreements which benefit from this block exemption may include the following obligations in respect of resellers:

1) in consideration for the according of special commercial or financial advantages by the supplier, to purchase only from the supplier, an undertaking deemed to be the same undertaking as the supplier for the purposes of the Competition Act or another undertaking entrusted by the supplier with the distribution of its goods pursuant to the agreement, certain petroleum-based motor-vehicle fuels which are specified in the agreement, or certain petroleum-based motor-

vehicle fuels which are the object of the agreement and other fuels, for resale in a service station designated in the agreement;

2) the obligation not to sell motor-vehicle fuel and other fuels which are supplied by other undertakings in the service station designated in the agreement;

3) the obligation not to use lubricants or other related petroleum-based products which are supplied by other undertakings within the service station designated in the agreement where the supplier has made available to the reseller, or financed, motor-vehicle lubrication equipment;

4) the obligation to have equipment owned or financed by the supplier serviced by the supplier or an undertaking designated by the supplier;

5) the obligation to advertise goods supplied by other undertakings within the service station designated in the agreement only in proportion to the share of these goods in the total turnover realised in the service station.

15. A service-station agreement shall not apply for a period of time longer than the period of time designated in the agreement for use of the service stations.

16. Subclause 1 2), subclauses 2 2)-5), subclause 4 1) and clauses 5-7 of this block exemption also apply to service-station agreements.

Annex 3

to Government of the Republic Regulation

No. 111 of 23 March 1999

Block Exemption in respect of Exclusive Distribution Agreements

1. Permission is hereby granted to enter into exclusive distribution agreements (hereinafter agreements) to which only two undertakings – the supplier and the reseller – are party, which agree as follows:

1) the supplier shall supply the contract goods for resale within the contract territory only to the reseller;

2) the supplier shall not supply the contract goods to other resellers for resale within the territory agreed upon with the reseller which is party to the agreement, i.e. the contract territory;

3) the reseller shall obtain the contract goods for resale only from the other party to the agreement.

2. In addition to clause 1 of this “Block Exemption in respect of Exclusive Distribution Agreements” (hereinafter block exemption), the following obligations which restrict or may restrict free competition may be included in the agreement in respect of the reseller:

- 1) not to manufacture or distribute goods which compete with the contract goods, i.e. goods which are identical to or considered by consumers as interchangeable with the contract goods in view of their price, quality, technical characteristics, conditions of sale and use, characteristics of use and other characteristics;
- 2) to refrain from seeking customers and establishing any distribution depot for the resale of contract goods outside the contract territory;
- 3) to purchase complete ranges of contract goods (purchase by sets);
- 4) to purchase minimum quantities of contract goods;
- 5) to sell the contract goods under trademarks, or packed and presented as specified by the supplier;
- 6) to take measures for the promotion of sales, in particular to advertise, to maintain a sales network and stock of goods, to provide customer and guarantee services and to employ staff having specialised or technical training.

3. This block exemption also applies to agreements which do not include all the obligations listed in clause 2 of this block exemption.

4. The following are not permitted under this block exemption:

- 1) reciprocal agreements between manufacturers of competing goods or inclusion of the terms and conditions of such agreements in other contracts between such manufacturers;
- 2) agreements where purchasers can obtain the contract goods in the contract territory only from the exclusive distributor and have no alternative source of supply outside the contract territory;
- 3) agreements where one or both of the parties makes it difficult for other resellers or intermediaries to obtain the contract goods from other dealers outside the contract territory.

5. Subclause 4 1) of this block exemption also applies if, instead of one or both manufacturers, an undertaking which is deemed to be the same undertaking as the manufacturer for the purposes of the Competition Act acts as one or both of the parties to the agreement.

6. Obligations which restrict or may restrict free competition and which are not permitted under this block exemption shall not be included in agreements, in particular:

- 1) those which limit the freedom of a party to the agreement to determine the prices or conditions of sale or to choose customers;

2) those which restrict the supplier upon resale to other resellers or purchasers outside the contract territory.

Annex 4

to Government of the Republic Regulation

No. 111 of 23 March 1999

Block Exemption in respect of Motor Vehicle Distribution and Servicing Agreements

1. Permission is hereby granted to enter into motor vehicle distribution and servicing agreements (hereinafter agreements) to which only two undertakings – the supplier and the dealer – are party, which agree as follows:

1) the supplier shall supply, within the contract territory, only to the dealer or only to the dealer and to a limited number of other undertakings, for the purpose of resale, new motor vehicles as defined in the Traffic Act (RT 1992, 12, 193; RT I 1995, 2/3, 3; 1996, 16, 268; 1997, 86, 1459; 1999, 16, 272) and which are specified in the agreement, together with spare parts therefor (hereinafter contract goods), and shall not sell contract goods to final consumers;

2) the supplier shall not provide servicing, incl. work under guarantee, repair and maintenance services and vehicle recall work, in respect of new motor vehicles which are specified in the agreement within the contract territory;

3) the dealer shall sell contract goods and provide servicing in respect of new motor vehicles which are specified in the agreement to the extent determined in the agreement and within the contract territory;

4) the dealer shall not modify contract goods without the supplier's consent unless such modification has been ordered by a final consumer in respect of goods bought by the consumer;

5) the dealer shall not manufacture goods which compete with contract goods, i.e. goods which are identical to or considered by consumers as interchangeable with the contract goods in view of their price, quality, technical characteristics, conditions of sale and use, characteristics of use and other characteristics.

2. In addition to clause 1 of this "Block Exemption in respect of Motor Vehicles Distribution and Servicing Agreements" (hereinafter block exemption), the following obligations which restrict or may restrict free competition may be included in the agreement in respect of the dealer:

1) not to permit other undertakings to benefit unduly, through any after-sales service performed in a common workshop, from investments made by the supplier;

- 2) neither to sell goods which compete with spare parts which are specified in the agreement without matching them in quality nor to use them for providing servicing in respect of new motor vehicles which are specified in the agreement;
- 3) without the supplier's consent, neither to conclude distribution or servicing agreements with other undertakings operating in the contract area for contract goods or competing goods nor to alter or terminate such agreements;
- 4) not to maintain enterprises or depots for the distribution of contract goods outside the contract territory;
- 5) not to advertise contract goods outside the contract territory;
- 6) not to sell new motor vehicles within the contract range or competing goods to final consumers using the services of an intermediary unless that intermediary has prior written authority from such consumers to purchase a specified motor vehicle or where the motor vehicle is taken away by the intermediary, to collect it;
- 7) to comply, in distribution, sales and after-sales servicing with minimum standards, regarding in particular the equipment of the business premises and the technical facilities for servicing, the specialised technical training of staff, advertising, the storage and delivery of contract goods and the quality of after-sales servicing;
- 8) to order contract goods from the supplier only at certain times or within certain periods;
- 9) to endeavour to sell, during a specified period, a minimum quantity of contract goods determined by the parties by common agreement;
- 10) to keep in stock a minimum quantity of contract goods and ensure the existence of demonstration vehicles within the contract range;
- 11) to inform customers of the extent to which spare parts from other sources might be used or might have been used;
- 12) not to sell new motor vehicles which are outside the contract range, except outside the contract territory or via another undertaking so that the sale cannot, in any manner, cause confusion in the eyes of consumers;
- 13) to supply contract goods or competing goods, incl. spare parts if the dealer uses them for the repair or maintenance of a motor vehicle, to a dealer within the contract territory if the dealer has concluded an agreement with the supplier.

3. This block exemption also applies to agreements which do not include all the obligations listed in clause 2 of this block exemption.

4. In order to reach agreement with regard to subclauses 2 9) or 10) of this block exemption, an expert third party shall, if necessary, be referred to who shall determine the corresponding quantities, taking account of recent sales results and possible changes in the market.

5. If the obligation specified in subclause 2 7) is included in an agreement, the obligation specified in subclause 2 12) shall not be included therein.

6. Agreements shall also benefit from this block exemption on condition that:

1) the dealer undertakes to perform servicing in respect of new motor vehicles within the contract range and sold by another undertaking at least to the extent specified in subclause 1 3) of this block exemption and taking account of subclause 2 7) of this block exemption;

2) the dealer imposes upon other undertakings with which the dealer has concluded distribution and servicing agreements pursuant to subclause 2 3) of this block exemption an obligation to perform servicing in respect of corresponding motor vehicles at least to the extent to which the dealer is so required;

3) the supplier has the right to terminate the agreement unilaterally subject to at least one year's notice in a case where it is necessary to reorganise the whole or a substantial part of the distribution network which consists of manufacturers and suppliers of contract goods and dealers with which such manufacturers or suppliers have concluded distribution agreements;

4) parties have the right to terminate the agreement unilaterally where the other party fails to perform one of its basic obligations.

7. The supplier shall:

1) not without objectively valid reasons withhold consent to conclude, alter or terminate agreements specified in subclause 2 3) of this block exemption;

2) not apply the minimum requirements specified in subclause 2 7) of this block exemption such that the dealer is subject to discrimination;

3) supply to the dealer, for the purpose of performance of a contract of sale concluded between the dealer and a final customer, any motor vehicle which corresponds to a model within the contract range.

8. The following are not permitted under this block exemption:

1) reciprocal agreements between manufacturers of competing goods or inclusion of the terms and conditions of such agreements in other contracts between such manufacturers;

2) agreements which include binding terms and conditions in respect of goods or services outside the contract range;

- 3) inclusion of terms and conditions in the agreement which restrict the dealer's freedom to determine resale prices;
- 4) direct or indirect restriction of the freedom of final consumers or dealers to obtain from other undertakings the contract goods or competing goods or servicing for such goods or the freedom of final consumers to resell the contract goods when the sale is not effected for commercial purposes;
- 5) grant of remunerations, without any objective reasons, by the supplier to the dealer, which are calculated on the basis of the place of destination of the motor vehicles resold or the place of residence of the purchaser;
- 6) direct or indirect restriction of the freedom of spare-part manufacturers to place their trade mark or logo on parts supplied for the initial assembly of contract goods or competing goods or for providing servicing in respect of such goods;
- 7) direct or indirect restriction of the freedom of the supplier to supply contract goods or competing goods to dealers;
- 8) direct or indirect restriction of communication to other undertakings of the technical information required for servicing unless such information can be deemed to be intellectual property.
9. Subclause 4 1) of this block exemption also applies if, instead of one or both manufacturers, an undertaking which is deemed to be the same undertaking as the manufacturer for the purposes of the Competition Act acts as one or both of the parties to the agreement.
10. Conditions which restrict or may restrict free competition and which are not permitted under this block exemption shall not be included in agreements.