

The Block Exemption Communiqué Regarding Franchise Agreements Communiqué No: 1998/7

Purpose

Article 1- The purpose of this Communiqué is to determine the conditions for the block exemption of franchise agreements from the application of the provisions of Article 4 in the Law on the Protection of Competition dated 07.12.1994 and numbered 4054.

Scope

Article 2- Franchise agreements to which only two undertakings are party, have been granted block exemption from the prohibition in Article 4 of the Law, based on Article 5 paragraph 3 of the Law, provided that they comply with the conditions included in this Communiqué.

Exemption granted under the first paragraph is also applicable to the main franchise agreements to which two undertakings are party. The provisions of this Communiqué as to the relation between the franchisor and franchisee is applicable to the relation between the franchisor and main franchisee, and the main franchisee and franchisee as well, insofar as their nature is proper.

Definitions

Article 3- As referred to in this Communiqué;

a) Franchise expresses a system composed of intellectual or industrial property rights in relation to brands, commercial titles, shop signs, useful models, designs, copyrights, know-how or patents to be used for the resale of goods or the provision of services to the ultimate users.

b) Franchise Agreement is an agreement whereby the franchisor grants to the franchisee the right to employ franchise in order him to market specific goods and /or services, in return for a direct or indirect contribution, and which at least covers the obligations

1. To use a common brand or enterprise name, and make the facilities and/or transportation vehicles look uniform;

2. To transfer know-how to the franchisee by the franchisor;

3. To support the franchisee by the franchisor commercially and technically on a continuous basis during the agreement;

c) Main Franchise Agreement is the agreement whereby the franchisor grants to the main franchisee the right to employ franchise in order for him to conclude franchise agreements with third parties, in return for a direct or indirect contribution.

d) The Goods of the Franchisor are the goods produced by the franchisor or according to his instructions, bearing the commercial title and/or brand of the franchisor.

e) Facilities Forming the Subject of the Agreement are the facilities where the franchise right is employed, or it is the center which is the departure point of the transportation vehicles forming the subject of the agreement, utilized in employing the franchise right, if the right to franchise is used outside the said facilities.

f) Know-how expresses the package of information that has arisen out of the franchisor's experience and experiments, is not patented, is confidential, concise and specified.

1. The concept of "confidentiality" expresses that know-how is "not known in general" or "is not easily accessible" as a whole or in terms of assembling its components.

This confidentiality cannot be limited to a narrow meaning such that every component of know-how is entirely unknown or inaccessible other than the business of the franchisor.

2. The concept of "concise" expresses that know-how is important in terms of the sales of goods or the provision of services to the ultimate users, and particularly the processing of the goods related to the provision of services, customer treating methods, and administrative and financial management, and is beneficial such that it upgrades the competitive power and especially the performance of the franchisee as of the date of concluding the agreement, or helps him during entry into a new market.

3. The expression of "specified" states that know-how is defined such that it is possible to verify it meets the criteria of confidentiality and conciseness. The definition of know-how may take place in either the franchise agreement or a separate agreement, or it may be entered in any way.

Obligations under Block Exemption

Article 4- The exemption envisaged within the framework of this Communiqué is also applicable in case of imposing the following obligations on the parties:

- a) In the territory of the agreement, the franchisor's obligations
 - 1. Not to make third parties use all or a part of the right to franchise;
 - 2. Not to use the right to franchise, or not to market the goods and services forming the subject of the franchise in a similar way;
 - 3. Not to supply the goods of the franchisor to third parties;
- b) The main franchisee's obligation not to conclude franchise agreements with third parties outside his territory of the agreement;
- c) The franchisee's obligation to use his right to franchise only in the facilities forming the subject of the agreement;
- d) The franchisee's obligation to avoid from seeking customers for the goods and services forming the subject of the right to franchise, outside the territory of the agreement;
- e) The franchisee's obligation not to manufacture, sell and use the goods competing with the goods forming the subject of the right to franchise, during the provision of goods and services;

In case the subject of the right to franchise covers the use and sales of spare parts or accessories besides specific types of goods during the provision of services, the obligation in subparagraph (e) can not be imposed on the franchisee for such spare parts or accessories.

Obligations not Preventing Block Exemption, Depending on Condition

Article 5- The exemption is also applicable in case any of the following obligations are imposed on the franchisee, provided that they are required in order to protect the intellectual and industrial property rights of the franchisor, or to keep up the common identity and reputation of the franchise network.

The obligations

- a) To sell or use during the provision of services only the goods bearing the minimum objective quality characteristics envisaged by the franchisor;
- b) To sell or use during the provision of services only the goods manufactured by the franchisor or third parties designated by him, and where this is unlikely, to apply the subjective quality characteristics by conforming to the qualities of the goods forming the subject of the right to franchise;
- c) Not to directly or indirectly deal with a similar business in a territory where it shall compete with any member of the franchise network including the franchisor, during the agreement and for a maximum of one year as of the expiration of the agreement;
- d) Not to acquire the partnership shares and any other economic assets of a competing undertaking insofar as it may affect the economic conducts and decisive bodies of this undertaking;
- e) To sell the goods forming the subject of the franchise to only the ultimate users, other franchisees, and resellers in the distribution channels of or allowed by the producer of these goods;
- f) To spend due effort for the sales of goods and the provision of services forming the subject of the right to franchise, offer for sale the minimum types of goods, attain a minimum turnover, plan the orders in advance, maintain minimum stocks, and provide customer service and guarantee;
- g) To pay to the franchisor a certain part of its income for advertisement expenses, and advertise in a way the franchisor himself approves.

Other Obligations not Preventing Block Exemption

Article 6- The exemption is also applicable in case any of the following obligations are imposed on the franchisee:

The obligations

- a) Not to disclose to third parties the know-how communicated by the franchisor, during the agreement and following its expiration;
- b) To transfer to the franchisor any experience obtained during the use of the right to franchise, and grant a license that is not exclusive to the franchisor and other franchisees for the know-how obtained as a result of this experience;
- c) In case of the infringement of the licensed intellectual and industrial property rights, to advise the franchisor of this situation, take legal proceedings against the infringers, or assist the franchisor in any legal proceedings taken against the infringers;
- d) Not to use the licensed know-how provided by the franchisor for the purposes other than the subject of the right to franchise, during the agreement and following its expiration;

e) To attend the educational programs organized by the franchisor, or ensure the attendance of the personnel;

f) To implement the commercial methods, and use the licensed intellectual and industrial property rights envisaged by the franchisor, including the later changes;

g) To comply with the standards envisaged by the franchisor, in relation to equipment and facilities and/or transportation vehicles forming the subject of the agreement;

h) To allow the franchisor to supervise the facilities and/or transportation vehicles forming the subject of the agreement, and inventories and accounts, including the goods sold and services provided;

i) Not to change the place of the facilities forming the subject of the agreement, without the consent of the franchisor;

j) Not to assign the rights and obligations in the franchise agreement, without the consent of the franchisor;

The obligations in this article are granted exemption even if they do not exist together with any of the obligations in Article 4.

Compulsory Elements to be Present in the Agreement in order to be able to Grant Exemption

Article 7- The exemption mentioned in Article 2 of this Communiqué is applicable in case the following terms and obligations take place in the agreement:

a) The franchisee has to be free to purchase the goods forming the subject of the franchise from the other franchisors, and the distributors in the event of distributing such goods via the network of other authorized distributors;

b) Where the franchisor obliges the franchisee to give guarantees for the goods of the franchisor, such obligation has to be fulfilled by the franchisee also for the goods supplied from any member of the franchise network, or the other distributors giving similar guarantees;

c) The franchisee has to be an independent undertaking. However, this independency should not affect, particularly, the common identity of the franchise network which is a result of the brands and signs used, and the uniform appearance of the facilities and/or transportation vehicles forming the subject of the agreement.

Conditions and Obligations outside the Block Exemption

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Article 8- In case one or more of the following conditions and obligations take place in the agreement, the exemption mentioned in Article 2 is not applicable:

In case

a) The undertakings producing the goods or providing the services that are the same in terms of their characteristics, prices and intended uses, or deemed equivalent by the users, conclude franchise agreements for such goods and services;

b) The franchisor is prevented from supplying goods having the same quality with those provided by the franchisor, reserving subparagraph (e) of Article 4, and subparagraph (b) of the first paragraph of Article 5;

c) The franchisee is obliged to sell or use the goods produced by the franchisor or third parties designated by the franchisor, during the provision of goods

d) Owing to the reasons other than an infringement by the franchisee of any of his obligations, the franchisee is prevented from continuing to use the licensed know-how following the expiration of the agreement, although the know-how has become known in general and easily accessible;

e) The franchisor, directly or indirectly, restricts the right of the franchisee to determine the sales price of the goods and services forming the subject of the right to franchise, on condition of reserving the opportunity for the franchisor to recommend on sales prices;

f) The franchisor prohibits the franchisee to raise an objection to the validity of intellectual and industrial property rights constituting a part of the right to franchise, reserving the opportunity for the franchisor to terminate the agreement due to this reason;

g) The franchisee is prohibited to sell the goods or services forming the subject of the right to franchise to the ultimate users in the country because of their places of residence.

Revocation of Exemption

Article 9- If the Board detects that an agreement exempt from the application of the provisions of Article 4 of the Law within the framework of this Communiqué, has effects incompatible with the terms provided in Article 5 of the Law, and particularly, the franchisee is provided with territorial protection, and at the same time one of the following cases exists, it may revoke the exemption provided by this Communiqué:

If

a) The entry into the relevant market or competition in this market is restricted to a significant extent with an overall effect of the parallel networks formed by similar agreements which the competing producers or distributors conclude;

b) As regards the goods or services forming the subject of the right to franchise, an effective competition does not take place in a significant part of the country, through the goods or services that are the same in terms of their characteristics, prices and intended uses, or deemed equivalent by their users;

c) One or both of the parties prevent the ultimate users from receiving, directly or via agents, the goods or services forming the subject of the right to franchise across the country due to their places of residence, or differentiate the characteristics of the said goods or services in different territories so as to segment the markets;

d) The franchisees commit concerted practices as to the sales prices of the goods or services forming the subject of the right to franchise;

e) The franchisor uses his right to supervise the facilities and transportation vehicles forming the subject of the agreement, or rejects the will of the franchisee to change the place of the facilities forming the subject of the agreement, or to assign his rights and obligations arising from the franchise agreement, due to the reasons other than protecting his intellectual and industrial property rights, keeping up the

Application of Article 6 of the Law

Article 10- The exemption granted pursuant to the provisions of this Communiqué does not prevent the application of Article 6 of the Law.

Notification

Article 11- Those franchise agreements under this Communiqué are not subject to the obligation for notification envisaged in Article 10 of the Law, and provided in the Communiqué numbered 1997/2 which was published in the Official Gazette dated 12.08.1997 and numbered 23078.

Entry into Force

Article 12- This Communiqué enters into force on the date it is published.

Execution

Article 13- The provisions of this Communiqué are executed by the President of the Competition Authority.