

SUBSIDIARY LEGISLATION 379.07**SPECIALISATION AGREEMENTS (BLOCK EXEMPTION) REGULATIONS**

1st July, 2002

LEGAL NOTICE 178 of 2002.

1. (1) The title of these regulations is the Specialisation Agreements (Block Exemption) Regulations. Citation and commencement.

(2) These regulations shall come into force on the 15th July 2002 and shall have effect until the 31st June, 2012.

2. These regulations specify the block exemption subject to such conditions and limitations and as applicable to categories of specialisation agreements in terms of article 5(1) of the Act. Scope.

3. In these regulations, unless the context otherwise requires - Interpretation.
"Act" means the Competition Act, which regulates competition and provides for fair trading in Malta; Cap. 379.

"agreement" means an agreement, a decision of an association of undertakings or a concerted practice;

"Commission" means the Commission for Fair Trading as provided for under the Act;

"competing undertaking" means an undertaking that is active on the relevant market (an actual competitor) or an undertaking that would, on realistic grounds, undertake the necessary additional investments or other necessary switching costs so that it could enter the relevant market in response to a small and permanent increase in relative prices (a potential competitor);

"connected undertakings" means:

(a) undertakings in which a party to the agreement, directly or indirectly:

- has the power to exercise more than half the voting rights, or
- has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
- 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 paragraph (a);

(c) undertakings in which an undertaking referred to in paragraph (b) has, directly or indirectly, the rights or powers listed in paragraph (a);

(d) undertakings in which a party to the agreement

together with one or more of the undertakings referred to in paragraphs (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in paragraph (a);

- (e) undertakings in which the rights or the powers listed in paragraph (a) are jointly held by:
- parties to the agreement or their respective connected undertakings referred to in paragraphs (a) to (d), or
 - one or more of the parties to the agreement or one or more of their connected undertakings referred to in paragraphs (a) to (d) and one or more third parties;

"Director" means the Director of the Office for Fair Competition as provided for under the Act;

"exclusive purchase obligation" means an obligation to purchase the product to which the specialisation agreement relates only from the party which agrees to supply it;

"exclusive supply obligation" means an obligation not to supply a competing undertaking other than a party to the agreement with the product to which the specialisation agreement relates;

"intellectual property rights" includes industrial property rights, copyright and neighbouring rights;

"participating undertakings" means undertakings party to the agreement and their respective connected undertakings;

"product" means a good and, or a service, including both intermediary goods and, or services and final goods and, or services, with the exception of distribution and rental services;

"production" means the manufacture of goods or the provision of services and includes production by way of subcontracting;

"relevant market" means the relevant product and geographic market to which the product, which is the subject matter of a specialisation agreement, belongs.

Block exemption.

4. (1) Subject to the provisions of these regulations, there shall be exempted from the provisions of article 5(1) of the Act the following agreements entered into between two or more undertakings (hereinafter referred to as "the parties") which relate to the conditions under which those undertakings specialise in the production of products (hereinafter referred to as "specialisation agreements"):

- (a) unilateral specialisation agreements, by virtue of which one party agrees to cease production of certain products or to refrain from producing those products and to purchase them from a competing undertaking, while the competing undertaking agrees to produce and supply those products; or
- (b) reciprocal specialisation agreements, by virtue of which two or more parties on a reciprocal basis agree

to cease or refrain from producing certain but different products and to purchase these products from the other parties, who agree to supply them; or

- (c) joint production agreements, by virtue of which two or more parties agree to produce certain products jointly.

(2) The block exemption contained in subregulation (1) shall apply to the extent that the specialisation agreements contain restrictions of competition falling within the scope of article 5(1) of the Act.

(3) The block exemption shall also apply to ancillary provisions contained in specialisation agreements, which do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation, including those concerning the assignment or use of intellectual property rights.

(4) The block exemption shall not apply to provisions which have the same object as the restrictions of competition provided for under regulation 7(1).

5. Without prejudice to the generality of regulation 4, the block exemption shall also apply where -

Applicability of block exemption.

- (a) the parties accept an exclusive purchase and, or exclusive supply obligation in the context of a unilateral or reciprocal specialisation agreement or a joint production agreement, or
- (b) the parties do not sell the products which are the object of the specialisation agreement independently but provide for joint distribution or agree to appoint a third party distributor on an exclusive or non-exclusive basis in the context of a joint production agreement provided that the third party is not a competing undertaking.

6. (1) The block exemption shall apply on condition that the combined market share of the participating undertakings does not exceed twenty-five *per centum* of the relevant market.

Market share.

(2) For the purposes of applying the market share threshold under this regulation, the following rules shall apply:

- (a) the market share shall be calculated on the basis of the market sales value; 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;
- (b) the market share shall be calculated on the basis of data relating to the preceding calendar year;
- (c) the market share held by the undertakings referred to in paragraph (e) of the definition of "connected undertakings" in regulation 3 shall be apportioned equally to each undertaking having the rights or the powers listed in paragraph (a) of the same definition.

(3) If the market share referred to in this regulation is initially not more than twenty-five *per centum* but subsequently rises above this level without exceeding thirty *per centum*, the block exemption shall continue to apply for a period of two consecutive calendar years following the year in which the twenty-five *per centum* threshold was first exceeded.

(4) If the market share referred to in this regulation is initially not more than twenty-five *per centum* but subsequently rises above thirty *per centum*, the block exemption shall continue to apply for one calendar year following the year in which the level of thirty *per centum* was first exceeded.

(5) The benefit of subregulations (3) and (4) may not be combined so as to exceed a period of two calendar years.

Non-applicability
of block
exemption.

7. The block exemption shall not apply to agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- (a) the fixing of prices when selling the products to third parties;
- (b) the limitation of output or sales; or
- (c) the allocation of markets or customers:

Provided that the block exemption shall nonetheless apply to:

- (a) provisions on the agreed amount of products in the context of unilateral or reciprocal specialisation agreements or the setting of the capacity and production volume of a production joint venture in the context of a joint production agreement;
- (b) the setting of sales targets and the fixing of prices that a production joint venture charges to its immediate customers in the context of regulation 5(b).

Withdrawal by
Commission.

8. The Commission is hereby being granted the power to withdraw the benefit of this block exemption when it finds in a particular case, on a request by the Director, that any agreement which is exempted by these regulations nevertheless has effects which are incompatible with the conditions provided for in article 7(1) of the Act, and in particular where -

- (a) the agreement is not yielding significant results in terms of rationalisation or consumers are not receiving a fair share of the resulting benefit, or
- (b) the products which are the subject of the specialisation are not subject to effective competition from identical products or products considered by users to be equivalent in view of their characteristics, price and intended use.