

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 enacts the following

REGULATION
ON RESEARCH AND DEVELOPMENT AGREEMENTS 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 categories of research and development agreements between undertakings operating on the same level of production or distribution chain (hereinafter: R&D agreements) and more closely prescribe specific conditions under which the said agreements may be exempted from prohibition.

Definition

Article 2

Specified terms used in this Regulation, shall have the following meaning:

- 1) 'party to the agreement' means a party to the research and development agreement and its respective 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) 'contract product' means a product arising out of the joint research and development, or manufactured or procured applying the contract technologies;
- 6) 'contract process' means a technology or process arising out of the joint research and development;
- 7) 'research and development' means acquisition of know-how relating to products, technologies or processes and carrying out of theoretical analysis, systematic study or experimentation, including experimental production, technical testing of products or processes, establishment of necessary facilities and obtaining of intellectual property rights for the results;
- 8) 'exploitation of the results' means production or distribution of contract products or application of contract technologies or assignment or licensing of intellectual property rights or communication of know-how required for such manufacture or application;
- 9) 'know-how' means a package of non-patented practical knowledge and information resulting from experience and testing which are secret (not generally known or easily accessible), substantial (the know-how is significant for production of contract products or implementation of contract process), and identified (described in

sufficiently clear manner to enable confirmation of criteria of secrecy and substantiality);

- 10) 'intellectual property rights' means industrial property rights, copyrights and neighboring rights;
- 11) 'active sale' means search and access to buyers or certain group of buyers located in the territory reserved for other party to the agreement and conducting acts aimed at sale of products to such buyers, including visits, sending letters and emails, advertising in the media intended exclusively for such buyers or group of buyers, founding affiliated companies, branches or organizational units in the territory reserved for other party to the agreement aimed at reaching the buyers and organizing sale, as well as concluding individual agreements with such buyers;
- 12) 'passive sale' means sale on the basis of order made by the buyer from location reserved for other party to the agreement, including orders driven by advertising in the media and Internet, available in the territory broader than territory exclusively intended for single distributor or specified group of buyers, being the result of a free and unlimited access to advertising message by every buyer or group of buyers.

Research and development agreements exempted from prohibition

Article 3

The R&D agreements entered into two or more independent undertakings on the same level of production or distribution chain shall be exempted from prohibition, if the subject of the agreements is:

- 1) joint research and/or development of products or production process, and joint exploitation of the results of that research and development, or
- 2) joint exploitation of the results of research and/or development of products or production process carried out pursuant to a prior agreement between the same undertakings, or
- 3) joint research and development of products or production process excluding joint exploitation of results achieved in research and development.

The exemption from prohibition of agreement referred to in Paragraph 1 of this Article shall be applied to particular provisions contained in such agreements, which do not represent a primary goal of such agreements but directly refer to them and are necessary for their implementation, being the provisions where parties to the agreement are committing not to independently or in corporation conduct research and development with third parties on the relevant market for the duration of agreement.

Conditions for exemption of research and development agreements

Article 4

The R&D agreements 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:

- 1) all parties to the agreement have access to the results of the joint research and development for further research or exploitation of results. However, research institutes, academic bodies, or undertakings which supply research and development as a commercial service and without normally being active in the exploitation of the results may agree to confine the use of results for purpose of further research;

- 2) each party to the agreement may independently exploit results of the joint research and development and pre-existing know-how necessary for the use of such results, conditioned to the research and development agreement solely being the subject to joint research and development. Such right to exploitation may be limited to one or more technical fields of application, where parties to the agreement are not competing undertakings at the time the research and development agreement is entered into;
- 3) any joint exploitation of research and development results must relate to the results that are protected by intellectual property rights or constitute know-how which substantially contribute to technical and economic progress, and such results must be decisive for the manufacture of the contract products or application of contract processes.
- 4) undertakings charged with the manufacture of contract products by way of specialization must be required to fulfil orders for supplies of the contract products from the order parties, except where the research and development agreement also provides for joint distribution.

Restrictions regarding content of research and development agreements

Article 5

The R&D agreements shall not be exempted from prohibition if they directly or indirectly, in isolation or in cooperation with other factors under the control of parties to the agreement contain restrictions aimed at:

- 1) restriction of the freedom of parties to the agreement to carry out research and development in isolation or in cooperation with third parties in a field unconnected with that to which the research and development relates or, after the completion of the agreement, in the field to which it relates or in a connected field;
- 2) prohibition to conduct dispute before the competent bodies of the Republic of Serbia on the intellectual property rights referring to the research and development or their results, upon completion of the research or development or upon expiration of the R&D agreement, whereby the right of other party to terminate the agreement in case of initiation of dispute shall be provided for;
- 3) prohibition to exploit intellectual property rights which are of the importance for the research and development upon expiry of protection period referring to the object of research and development, without prejudice to the possibility to provide for termination of the R&D agreement in the event of one of the parties challenging the validity of such intellectual property right;
- 4) restriction on output or sales;
- 5) fixing of prices charged to third parties;
- 6) limiting on number of buyers to which the contractual product can be sold upon expiry of period referred to in Article 7, Paragraph 1, Item 1 of this Regulation;
- 7) prohibition on effecting passive sales for the contract products in territories reserved for other parties;
- 8) prohibition on putting the contract product on the market or to pursue active sale policy in territories reserved for other parties to the agreement upon expiry of period referred to in Article 7, Paragraph 1, Item 1 of this Regulation
- 9) requirement for parties to the agreement not to grant licenses to third parties to manufacture the contract products or to apply contract processes unless the agreement provides for the exploitation of the joint research and development results by at least one of parties to the agreement, and such exploitation takes place;

- 10) refusal to meet demand from customers in the parties' respective territories who would market the contract products in other territories;
- 11) conditioning parties to the agreement to make it difficult for their buyers to obtain contract product from other resellers in the territory of the Republic of Serbia, particularly by exploitation of intellectual property rights or by taking measures to prevent sale of the contract product, which is already lawfully placed on the market of the Republic of Serbia by other party to the agreement, or on the grounds of its consent.

As an exemption from Paragraph 1 of this Article, the R&D agreements may contain provisions stipulating the following:

- 1) setting of production targets in case where exploitation of results includes the joint production of the contract products;
- 2) setting of sales targets and prices charged to immediate customers in case where exploitation of results includes the joint distribution of the contract products.

The R&D Agreements shall not be exempted from prohibition if there are several R&D agreements on the relevant market which, due to the cumulative effect, do not meet conditions for the exemption from prohibition from Article 11 of the Law and this Regulation.

Relevant market share threshold

Article 6

Market share of parties to the agreement shall be calculated based on the generated revenue from sales, 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 based on the 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 market share of their affiliated undertakings defined and calculated in a manner set in Paragraph 1 and 2 of this Article.

Duration of exemption

Article 7

The R&D agreements shall be exempted from prohibition:

- 1) for the duration of research and development and where parties to the agreement are not competing undertakings, and for the period of seven years from the date of placing the contract product subject to joint exploitation of results, conditioned that at the time of conclusion of agreement, the combined market share of parties to the agreement on comparable of interchangeable relevant product market does not exceed 25 %.
- 2) even after the expiry of duration provided in Item 1 of this Paragraph, as long as the combined market share of parties to the agreement on the relevant market with regard to the same contract products does not exceed 25%.

If the combined market share referred to in Paragraph 1 of this Article at the time of concluding agreement does not exceed 25%, and subsequently increases exceeding 30%, the exemption shall continue to apply for the duration of two consecutive calendar years following the year in which market share saw the first-time increase in excess of 25%.

If the market share referred to in Paragraph 1 of this Article at the time of concluding agreement does not exceed 25%, and subsequently increases exceeding 30% but no more than 40%, the exemption shall continue to apply for the duration of one calendar year following the year in which market share saw the first-time increase in excess of 30%.

The duration of exemption referred to in Paragraph 2 and 3 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

The R&D agreements 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 R&D agreements 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
