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**REGULATION
OF THE COUNCIL OF MINISTERS**

of January 28, 2003

**concerning the exemption of certain vertical agreements in the motor vehicle sector
from the ban of agreements restraining the competition**

(Official Journal of Laws of 6 March 2003)

Pursuant to Article 7 of the Act of 15 December 2000 on Competition and Consumer Protection (Official Journal of Laws No. 122, item 1319, and of 2001, No. 110, item 1189 and No. 154, item 1800 and of 2002, No. 129, item 1102 and No. 166, item 1360) the Council of Ministers has adopted the following Regulation:

Section 1

General conditions

§ 1. Regulation determines:

- 1) conditions which have to be fulfilled if vertical agreements in the motor vehicle sector are to be exempted from the ban of Article 5 of the Act of 15 December 2000 on Competition and Consumer Protection, hereinafter referred to as "Act";
- 2) clauses, which included in vertical agreements are not deemed to be violations of Article 5 of the Act (allowable clauses)
- 3) clauses, which included in vertical agreements are deemed to be violations of Article 5 of the Act (non-allowable clauses)
- 4) the period of the exemption's applicability.

§ 2. For the purposes of this Regulation:

- 1) "vertical agreement in the motor vehicle sector" means agreements entered into by two or more undertakings, each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and has as its object the purchase, sale or resale of new motor vehicles, spare parts or repair and maintenance services relating to motor vehicles;
- 2) "exclusive supply obligations" means clauses in vertical agreements in the motor vehicle sector, according to which the supplier is obliged directly or indirectly to sell the contract goods only to one buyer;
- 3) "selective distribution" means a distribution system where the supplier undertakes directly or indirectly to:
 - a. sell the contract goods only to distributors or repairers selected on the basis of specified criteria and where these distributors or repairers undertake not to sell such goods or services to unauthorized distributors or independent repairers, without prejudice to the ability to sell spare parts to independent repairers or the obligation to provide independent operators with all technical information, diagnostic equipment, tools and training required for the repair and maintenance of motor vehicles or for the implementation of environmental protection measures, or
 - b. subcontract the provision of repair and maintenance services for contract motor vehicles to repairer selected on the basis of specific criteria;

- 4) “quantitative selective distribution system” means a selective distribution system where the supplier uses criteria for the selection of distributors or repairers which directly limit their number;
- 5) “qualitative selective distribution system” means a selective distribution system where the supplier uses criteria for the selection of distributors or repairers which:
 - a. are only qualitative in nature,
 - b. are required by the nature of the contract goods or services,
 - c. are laid down uniformly for all distributors or repairers applying to join the distribution system,
 - d. are not applied in a discriminatory manner,
 - e. do not directly limit the number of distributors or repairers;
- 6) “intellectual and industrial property rights” means rights specified in art. 2 par. 1 of the Act;
- 7) “know-how” means a package of non-patented secret information, technical and technological, as well as organization and management rules, which have been kept secret, provided they constitute the whole or part of the body of practical information derived from experience and testing by the supplier, indispensable to the buyer for the use, sale or resale of the contract goods;
- 8) “supplier” – an undertaking which sells the contract goods to the buyer;
- 9) “buyer” – distributor or repairer;
- 10) “distributor” means an undertaking, which buys new contract motor vehicles or spare parts with the intention to resell them at the wholesale or retail level of trade (respectively a wholesale distributor or a retail distributor), or an undertaking which, together with the supplier, entered into agreement, on the basis of which it sells these goods on the supplier’s behalf;
- 11) “authorized distributor” means a distributor operating within the distribution system established by the supplier of the motor vehicles;
- 12) “end user” means a consumer or a businessman who buys contract goods related to his business activity and is not the distributor of these goods; the term includes the financing party, as in Articles 700-709 of the Act of 23 April 1964 of the Civil Code, unless the leasing contracts used provide for a transfer of ownership or an option to purchase the vehicle prior to the expiry of the contract or they have the effect of transferring ownership of a new motor vehicle;
- 13) “repairer” - a provider of repair and maintenance services for motor vehicles;
- 14) “authorized repairer” - a provider of repair and maintenance services for motor vehicles who operates within the distribution system set up by the supplier;
- 15) “independent repairer” means a provider of repair and maintenance services for motor vehicles not operating within the distribution system set up by the supplier of the motor vehicles for which it provides repair or maintenance. An authorized repairer within the distribution system of a given supplier shall be deemed to be an independent repairer to the extent that he provides repair or maintenance services for motor vehicles in respect of which he is not a member of the respective supplier’s distribution system;
- 16) “contract goods” – new motor vehicles, spare parts, and repair and maintenance services for motor vehicles subject to the agreement which, according to the Regulation, is exempted from restrictions;
- 17) “light commercial vehicle” means a motor vehicle intended, according to the traffic law, for the transport of goods or passengers with a maximum mass not exceeding 3,5 tons; if a certain light commercial vehicle is also sold in a version with a maximum

- mass above 3,5 tons, all versions of that vehicle are considered to be light commercial vehicles;
- 18) “repair and maintenance services” – repair and maintenance services for the motor vehicles;
- 19) “spare parts” means goods which are to be installed in or upon a motor vehicle so as to replace components of that vehicle, including goods such as lubricants which are necessary for the use of a motor vehicle, with the exception of fuel;
- 20) “original spare parts” means spare parts which are of the same quality as the components used for the assembly of a motor vehicle and which are manufactured according to the specifications and production standards provided by the vehicle manufacturer for the production of components or spare parts for the motor vehicle in question. This includes spare parts which are manufactured on the same production line as these components. It is presumed, unless the contrary is proven, that parts constitute original spare parts if the part manufacturer certifies that the parts match the quality of the components used for the assembly of the vehicle in question and have been manufactured according to the specifications and production standards of the vehicle manufacturer;
- 21) “spare parts of matching quality” means exclusively spare parts made by any undertaking which can certify at any moment that the parts in question match the quality of the components which are or were used for the assembly of the motor vehicles in question;
- 22) “motor vehicle which corresponds to a model within the contract range” means a vehicle which is the subject of a distribution agreement with another undertaking within the distribution system set up by the manufacturer or with his consent and which is:
- a. manufactured or assembled in volume by the manufacturer, and
 - b. identical as to body style, drive-line, chassis, and type of motor to a vehicle within the contract range;
- 23) “non-compete obligation” means:
- a) any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods which are regarded as the substitutes of the contract goods,
 - b) any direct or indirect obligation on the buyer to purchase from the supplier more than 30 % of the buyer’s total purchases of the new contract motor vehicles or spare parts, corresponding motor vehicles or contract services and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding calendar year,
 - c) an obligation that the distributor have brand-specific sales personnel for different brands of motor vehicles, unless the distributor decides to have brand-specific sales personnel and the supplier pays all the additional costs involved;
- 24) “active sale” means activities on the part of the distributor or repairer which aim at winning new customers or maintaining relations with the old ones, and which consist of advertising and promotional campaigns, establishing new dealerships and distribution or service centers in a given area;
- 25) “passive sale” means:
- a. sale in response to individual customers’ demand for new motor vehicles, spare parts or repair and maintenance services;
 - b. large-scale advertising or promotion campaigns in the media, including the Internet, which reach customers on the authorized areas of other distributors, or certain groups of customers, and whose purpose is to win customers from outside those areas or groups of customers; this includes reaching customers from unauthorized areas or from the area of the distributor’s own operations.

26) “exemption” – the exemption from the ban specified in Article 5 of the Act.

§ 3. 1. Subject to paragraph 2, the exemption shall apply particularly to those vertical agreements in the motor vehicle sector which contain exclusive supply obligations, or establish qualitative or quantitative selective distribution systems.

2. The exemption shall apply to vertical agreements in the motor vehicle sector entered into between an association of undertakings and its members, or between such an association and its suppliers, if:

- 1) all its members are distributors of motor vehicles or spare parts for motor vehicles or repairers and
- 2) if no individual member of the association, together with its connected undertakings, has, in the calendar year prior to the conclusion of the agreement, a total annual turnover exceeding EUR 50 million.

3. Vertical agreements in the motor vehicle sector containing provisions which relate to the assignment to the buyer or use by the buyer of intellectual and industrial property rights or know-how shall be exempted under this Regulation, provided that those provisions are directly related to the use, sale or resale of the contract goods by the buyer or its customers.

Section 2

Conditions for applicability of the exemption

§4. 1. Subject to paragraphs 2-4 and § 5-10, the exemption shall apply provided that the market share of the supplier or of the capital group to which the supplier belongs, on the relevant market where it sells the contract goods or services does not exceed 30 %.

2. Subject to § 5, the exemption shall apply to vertical agreements establishing quantitative selective distribution systems for the sale of new motor vehicles provided that the market share of the supplier or the capital group to which the supplier belongs, on the relevant market where it sells these motor vehicles does not exceed 40 %.

3. The exemption shall apply to vertical agreements establishing qualitative selective distribution systems irrespective of the market share of the parties to these agreements.

4. Subject to § 5, the exemption shall apply to vertical agreements containing exclusive supply obligations on condition that the market share held by the buyer or the capital group to which the buyer belongs, does not exceed 30 % of the relevant market where it purchases the contract goods or services.

§5. 1. If the market share, specified in §4, does not exceed 30% or 40% but subsequently:

- 1) rises above that level without exceeding 35 % or 45 % respectively, the exemption shall continue to apply for a period of two consecutive calendar years following the year in which the market share threshold of 30 % or 40 % respectively was first exceeded;
- 2) rises above 35 % or 45 % respectively, the exemption shall continue to apply for one calendar year following the year in which the level of 30 % or 40 % respectively was first exceeded;

2. The exemption period provided for in clause 1 cannot be combined so as to exceed a period of two calendar years following the year, in which the market share specified in §4, exceeded the level of 30% or 40 % respectively.

§6. 1. The market shares specified in §4. clause 1 and 2 shall be calculated in the following way:

- 1) for the distribution of new motor vehicles – on the basis of the volume of the new contract motor vehicles sold by the supplier, together with any other motor vehicles sold by the supplier which are regarded as interchangeable or substitutable;
- 2) for the distribution of spare parts – on the basis of the value of contract spare parts, together with any other spare parts sold by the supplier which are regarded as interchangeable or substitutable;
- 3) for the provision of repair and maintenance services – on the basis of the value of the contract services sold by the members of the supplier 's distribution network together with any other services sold by these members which are regarded as interchangeable or substitutable.

2. If data required for calculating market share levels specified in clause 1 are unavailable, the following rules shall apply:

- 1) if the volume data required for those calculations are not available, value data may be used;
- 2) if the value data required for those calculations are not available, volume data may be used;
- 3) if both volume and value data are not available, estimates based on other reliable market information may be used.

3. For the purposes of §4. clause 4, the market purchase volume or the market purchase value respectively, or estimates thereof shall be used to calculate the market share.

4. The market share shall be calculated on the basis of data relating to the calendar year preceding the year when the contract was made.

5. When calculating the market share level, one does not take into account the sales between undertakings belonging to one capital group.

§ 7. The exemption shall apply on condition that the vertical agreement in the motor vehicle sector concluded with a distributor or repairer provides that the supplier agrees to the transfer of the rights and obligations resulting from the vertical agreement to another distributor or repairer within the distribution system and chosen by the former distributor or repairer.

§ 8. The exemption shall apply on condition that the vertical agreement in the motor vehicle sector concluded with a distributor or repairer provides that a supplier who wishes to give notice of termination of an agreement must give such notice in writing and must include detailed reasons for the termination, in order to prevent the supplier from ending a vertical agreement with a distributor or a repairer because of practices which may not be restricted under this Regulation.

§ 9. 1. The exemption shall apply on condition that the vertical agreement in the motor vehicle sector concluded by the supplier of new motor vehicles with a distributor or authorized repairer provides

- 1) that the agreement is concluded for a period of at least five years and each party undertakes to give the other party at least six months' prior notice of its intention not to renew the agreement, or
- 2) that the agreement is concluded for an indefinite period and the period of notice for regular termination of the agreement is at least two years for both parties, or
- 3) that the agreement is concluded for an indefinite period and the period of notice for regular termination of the agreement is at least one year for both parties if:

- a) the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or
- b) the supplier terminates the agreement where it is necessary to re-organize the whole or a substantial part of the distribution network.

2. Clause 1 does not apply to the termination of the agreement on the grounds of a flagrant violation of its provisions.

§10. 1. The exemption shall not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, or training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures.

2. Such access, specified in clause 1, must include in particular the unrestricted use of the electronic control and diagnostic systems of a motor vehicle, the programming of these systems in accordance with the supplier's standard procedures, the repair and training instructions and the information required for the use of diagnostic and servicing tools and equipment.

3. Access, specified in clause 1, must be given to independent operators in a non-discriminatory, prompt and proportionate way, and the information must be provided in a usable form. If the relevant item is covered by an intellectual or industrial property right or constitutes know-how, access shall not be withheld in any abusive manner.

4. For the purposes of clause 3 "independent operator" shall mean undertakings which do not belong to the distribution system but are directly or indirectly involved in the repair and maintenance of motor vehicles, in particular independent repairers, manufacturers of repair equipment or tools, independent distributors of spare parts, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers and their employees.

Section 3

Allowable clauses

§11. The exemption shall apply to clauses restricting competition in vertical agreements in the motor vehicle sector, which have as their object:

- 1) the restriction of the buyer's ability to determine its sale price by the supplier imposing a maximum sale price or recommending a sale price of contract goods, unless this sale price is in real terms a minimum or fixed sale price;
- 2) the restriction of:
 - a. active sales into the exclusive territory or to an exclusive customer group reserved to another distributor or repairer, where such a restriction does not limit sales by the customers of the distributor or repairer,
 - b. sales to end users by a distributor operating at the wholesale level of trade,
 - c. sales of new motor vehicles and spare parts to unauthorized distributors by the members of a selective distribution system in markets where selective distribution is applied, subject to the provisions of point (a),
 - d. the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;

- 3) the prohibition on a member of a selective distribution system, operating at the retail level of trade, from operating out of an authorized place of establishment, subject to the provisions of §17 item 2;
- 4) the obligation of the distributor to give end users the name and address of the authorized repairer or repairers in question before the conclusion of a sales contract and, if any of these authorized repairers is not in the vicinity of the sales outlet, to also tell end users how far the repair shop or repair shops in question are from the sales outlet; however, such obligations may only be imposed provided that similar obligations are imposed on distributors within the distribution system whose repair shop is not on the same premises as their sales outlet;
- 5) the obligation of a repairer to use original spare parts from the supplier for repairs carried out under warranty, and free servicing campaigns;
- 6) the obligation of a distributor to sell motor vehicles from other suppliers in separate areas of the showroom in order to avoid confusion between the makes.

§12. The exemption shall apply to clauses imposing on a distributor or a repairer the obligation:

- 1) to respect, in the distribution of new motor vehicles and spare parts as well as in the provision of repair and maintenance services, minimum standards in particular relating to:
 - a) the facilities and technical equipment used to sell contract motor vehicles and spare parts or repair and maintenance services,
 - b) specialist and technical personnel training,
 - c) advertising,
 - d) the reception, warehousing and delivery of contract motor vehicles or corresponding vehicles and of contract spare parts,
 - e) the provision of repair and maintenance services relating to contract motor vehicles and corresponding vehicles, especially with regard to safe and reliable functioning of motor vehicles;
- 2) to order contract goods from a supplier only at specified dates or at specified periods of time, unless the interim periods exceed three months;
- 3) to undertake measures aiming at the sale of minimal amount of contract goods agreed upon by both parties, in an authorized area of operations and within a specific period of time;
- 4) to maintain the minimal number of contract motor vehicles and spare parts, agreed on by both parties, in stock;
- 5) to keep motor vehicles or their minimal number for the purposes of demonstrations;
- 6) to carry out repairs under warranty, free-of-charge repair and maintenance services and free servicing campaigns; for contract motor vehicles and their substitutes;
- 7) to notify customers, in a general way, of the extent to which spare parts from other sources may be used for the repair and maintenance of contract motor vehicles or their substitutes;
- 8) to inform customers where, for the repair and maintenance of contract motor vehicles or their substitutes, other than original spare parts were used.

Section 4

Non-allowable clauses

§13. The exemption shall not apply to vertical agreements in the motor vehicle sector which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- 1) subject to §11 item 1, the restriction of the distributor's or repairer's ability to determine its sale price by the supplier imposing a minimum or fixed sale price of contract goods;
- 2) subject to § 11 item 2, the restriction of the territory into which, or of the customers to whom, the distributor or repairer may sell the contract goods;
- 3) the restriction of cross-supplies between distributors or repairers within a selective distribution system, including between distributors or repairers operating at different levels of trade;
- 4) subject to §11 item 3, the restriction of active or passive sales of new passenger cars or light commercial vehicles, spare parts for any motor vehicle or repair and maintenance services for any motor vehicle to end users by members of a selective distribution system operating at the retail level of trade in markets where selective distribution is used;
- 5) subject to §11 item 3, the restriction of active or passive sales of new motor vehicles, other than passenger cars or light commercial vehicles, to end users by members of a selective distribution system operating at the retail level of trade in markets where selective distribution is used.

§14. The exemption shall not apply to vertical agreements in the motor vehicle sector, to the extent to which they concern the sale of new motor vehicles, which directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- 1) the restriction of the distributor's ability to sell any new motor vehicle which corresponds to a model within its contract range;
- 2) the restriction of the distributor's ability to subcontract the provision of repair and maintenance services to authorized repairers.

§15. The exemption shall not apply to vertical agreements in the motor vehicle sector, to the extent to which they concern the sale of spare parts and of repair and maintenance services, which directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- 1) the restriction of the authorized repairer's ability to limit its activities to the provision of repair and maintenance services and the distribution of spare parts;
- 2) the restriction of the sales of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use these parts for the repair and maintenance of a motor vehicle;
- 3) the restriction agreed between a supplier of original spare parts or spare parts of matching quality, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, which limits the supplier's ability to sell these spare parts or repair and maintenance services to authorized or unauthorized distributors or to authorized or independent repairers or end users;
- 4) subject to §11 item 5, the restriction of a distributor's or authorized repairer's ability to obtain original spare parts or spare parts of matching quality from a third undertaking of its choice and to use them for the repair or maintenance of motor vehicles;

- 5) the restriction agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components which limits the latter's ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts.

§16. The exemption shall not apply to the following clauses of vertical agreements in the motor vehicle sector:

- 1) clauses which prohibit competition;
- 2) clauses which directly or indirectly limit the ability of an authorized repairer to provide repair and maintenance services for vehicles from competing suppliers;
- 3) clauses which directly or indirectly cause the members of a distribution system not to sell motor vehicles or spare parts of particular competing suppliers or not to provide repair and maintenance services for motor vehicles of particular competing suppliers;
- 4) clauses which directly or indirectly cause the distributor or authorized repairer, after termination of the agreement, not to manufacture, purchase, sell or resell motor vehicles or not to provide repair or maintenance services.

§17. As regards the sale of new motor vehicles, the exemption shall not apply to any of the following clauses contained in vertical agreements:

- 1) clauses which directly or indirectly cause the retailer not to sell leasing services relating to contract motor vehicles or corresponding motor vehicles;
- 2) clauses which directly or indirectly limit any distributor of passenger cars or light commercial vehicles within a selective distribution system in its ability to establish additional sales or delivery outlets at other locations within the common market where selective distribution is applied.

§18. As regards repair and maintenance services or the sale of spare parts, the exemption shall not apply to any clauses in vertical agreements which directly or indirectly determine the place of establishment of an authorized repairer where selective distribution is applied.

§ 19. The exemption shall not apply to vertical agreements in the motor vehicle sector, if the clauses, as referred to in paragraphs 16-18, cannot be separated from the agreement in its entirety.

Section 5

Transitional and final provisions

§ 20. 1. The provisions of the Regulation shall apply to vertical agreements in the motor vehicle sector which were made before the Regulation entered into force.

2. As regards agreements specified in clause 1, if the market share level, as specified in §4, was exceeded before the Regulation entered into force, it shall be assumed that it was exceeded on the first day when it entered into force.

§ 21. This Regulation shall expire on 31 May 2010.

§ 22. This Regulation shall enter into force on 1 February 2004 with the exception of § 17 item 2 which shall apply from 1 October 2005.

¹⁾ The amendments of the above-mentioned Act were announced in the Official Journal of Law of 1971, No. 27, item 252, of 1976, No. 19, item 122, of 1982, No. 11, item 81, No. 19, item 147, No. 30, item 210, of 1984, No. 45, item 242, of 1985, No. 22, item 99, of 1989, No. 3, item 11, of 1990, No. 34, item 198, No. 55, item 321 and No. 79, item 464, of 1991, No. 107, item 464 and No. 115, item 496, of 1993, No. 17, item 78, of 1994, No. 27, item 96, No. 85, item 388 and No. 105, item 509, of 1995, No. 83, item 417, of 1996, No. 114, item 542, No. 139, item 646 and No. 149, item 703, of 1997, No. 43, item 272, No. 115, item 741, No. 117, item 751 and No. 157, item 1040, of 1998, No. 106, item 668 and No. 117, item 758, of 1999, No. 52, item 532, of 2000, No. 22, item 271, No. 74, item 855 and 857, No. 88, item 983 and No. 114, item 1191, of 2001, No. 11, item 91, No. 71, item 733, No. 130, item 1450 and No. 145, item 1638, and of 2002, No. 113, item 984 and No. 11, item 1176.