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The Block Exemption Communiqué on the Exclusive Distribution Agreements Communiqué No. 1997/3

Purpose

Article 1- The purpose of this Communiqué is to determine the conditions of block exemption for specific exclusive distribution agreements from the application of the provisions of the Article 4 of the Act on the Protection of Competition, No. 4054 dated 07.12.1994.

Scope

Article 2- Pursuant to the Article 5 paragraph 3 of the Act and subject to the conditions in this Communiqué, the agreements to which only two undertakings are party and whereby one party agrees to supply the other with certain goods for resale within the whole country or a defined part of it, have been given group exemption from the prohibition in the Article 4 of the Act.

Obligations Falling Within the Scope of Block Exemption

Article 3- Obligations falling within the scope of block exemption are stated below:

a) No competitive restriction shall be imposed on the supplier other than the obligation not to directly sell the contract goods to users in the contract territory.

b) No competitive restriction shall be imposed on the exclusive distributor other than,

1- The obligation not to manufacture or distribute goods which compete with the contract goods,

2- The obligation to obtain the contract goods for resale only from the other party,

3- The obligation to refrain, outside the contract territory and in relation to the contract goods, from seeking customers, establishing any branch and maintaining a distribution depot.

c) Exemption shall also be applied if all or part of the following obligations are imposed on the exclusive distributor.

1- To purchase complete ranges of goods or at least a minimum quantity,

2- To sell the contract goods under the trademarks, packages and presentations specified by the supplier,

3- To take measures for promotion of sales such as advertising, maintaining stocks, establishing sales network, providing guarantee service, employing specialized staff.

Conditions and Obligations Falling Outside the Scope of Block Exemption

Article 4- The provisions of exemption granted by the Article 2 shall not apply where one or more of the conditions mentioned below are present in the agreement:

a) Manufacturers of identical goods or of goods which are considered by users as equivalent in view of their characteristics, prices and intended uses enter into reciprocal exclusive distribution agreements between themselves in respect of such goods,

b) Manufacturers of identical goods or of goods which are considered by users as equivalent in view of their characteristics, prices and intended uses enter into non-reciprocal exclusive distribution agreements between themselves in respect of such goods,

c) Users can obtain the contract goods in the contract territory only from the exclusive distributor, and have no alternative sources of supply outside the contract territory,

d) One or both of the parties make it difficult for intermediaries or users to obtain the contract goods from other dealers inside the country, or from outside the country in case no alternative sources of supply are available.

Production by Connected Undertakings

Article 5- The Article 4 shall also apply where the goods referred to in the Article 4 subparagraphs (a) and (b) are manufactured by an undertaking connected with a party to the agreement.

Undertakings whose characteristics are mentioned below are deemed as connected undertakings.

a) Undertakings where a party to the agreement, directly or indirectly, owns more than half of the capital or business assets, or has the power to exercise more than half of the voting rights, or has the power to appoint more than half of the members of the supervisory board, board of directors or bodies legally representing the undertaking, or has the right to manage the affairs,

b) Undertakings which directly or indirectly have in or over a party to the agreement the rights or powers listed in the subparagraph (a);

c) Undertakings in which an undertaking referred to in the subparagraph (b) directly or indirectly has the rights or powers listed in the subparagraph (a).

Undertakings in which the parties to the agreement or undertakings connected with them jointly have the rights or powers set out in the subparagraph (a) shall be considered to be connected with each of the parties to the agreement.

Revocation of Exemption

Article 6- The Competition Board may revoke an exemption provided by this Communiqué, pursuant to the Article 13 of the Act, if it finds that an agreement which is exempted by this Communiqué has effects which are incompatible with the conditions set out in the Article 5 of the Act, and particularly under the conditions mentioned below.

a) If the contract goods are not subject, within the contract territory, to effective competition from the identical goods or goods considered by users as equivalent in view of their characteristics, prices and intended uses,

b) If access by other suppliers to the different stages of distribution within the contract territory is made difficult to a significant extent,

c) If it is not possible for intermediaries or users to obtain the contract goods by customary means outside the contract territory,

d) If the exclusive distributor, without any objectively justified reason, directly or indirectly, refuses to supply in the contract territory categories of purchasers who cannot obtain the contract goods elsewhere on suitable terms, or sells the contract goods at excessively high prices.

The Application of the Communiqué to the Concerted Practices

Article 7- This Communiqué shall also apply mutatis mutandis to concerted practices between the undertakings, which fall within the scope of the Article 2.

The Application of the Article 6 of the Act

Article 8- An exemption given pursuant to the provisions of this Communiqué, does not prevent the application of the Article 6 of the Act.

Notification

Article 9- The exclusive distribution agreements which fall within the scope of this Communiqué are not subject to the notification referred to in the Article 10 of the Act.

The agreements which have been concluded before the date of entry into force of this Communiqué, which are still valid and which satisfy the conditions set out in this Communiqué, shall also fall within the scope of this Communiqué.

Entry into Force

Article 10- This Communiqué shall enter into force on the date when the Competition Board announces by a Communiqué the conclusion of the organization of the Competition Authority, pursuant to the Transitional Article 2 of the Act.

Implementation

Article 11- This Communiqué shall be executed by the President of the Competition Authority.