

**BLOCK EXEMPTION COMMUNIQUÉ ON
SPECIALIZATION AGREEMENTS
(COMMUNIQUÉ NO: 2013/3)****Purpose**

ARTICLE 1 – (1) The purpose of this Communiqué is to establish the conditions for granting block exemption to specialization agreements between undertakings from the application of the provisions of article 4 of the Act on the Protection of Competition, dated 12.7.1994 and numbered 4054.

Scope

ARTICLE 2 – (1) Agreements related to specialization and distribution in production falling under article 4 of the Act No: 4054, which are concluded between undertakings owning complementary economic assets and operations in general and the market shares of which do not exceed the thresholds specified in article 7 of this Communiqué are covered by this Communiqué.

Basis

ARTICLE 3 – (1) This Communiqué was prepared on the basis of articles 1, 5 and 27(f) of the Act No: 4054.

Definitions

ARTICLE 4 – (1) In the application of this Communiqué,

- a) Downstream product: refers to a product in the production of which one or more of the parties use the specialization product as an input and which is sold by those parties on the relevant market,
- b) Agreement: refers to an agreement, decision of association of undertakings or concerted practice,
- c) Distribution: refers to the distribution activity including the provision of services and the sale of goods,
- ç) Actual competitor: refers to an undertaking that is active on the same relevant market,
- d) Preparation of services refers to the activities related to the services provided for the customers in the upstream market,
- e) Relevant market: refers to the relevant product and geographic market to which the specialization products belong, and, where the specialization products are intermediary products, the downstream product and geographic market where these intermediary products are used as mandatory inputs,
- f) Exclusive supply obligation: Refers to the procurement of the specialization product exclusively from the party to the specialization agreement;
- g) Exclusive supply obligation: Refers to the obligation not to supply the specialization product to any party competing with the party or parties to the agreement;
- ğ) Joint distribution: Refers to the joint distribution by the parties by way of a joint team, organization or undertaking, or by appointing a non-competing third party as an exclusive or non-exclusive distributor;
- h) Potential competitor: refers to an undertaking which, in the absence of the specialization agreement, would, in case of a small but permanent increase in prices, be likely to enter the relevant market within no more than 3 years by undertaking the necessary switching costs or making the additional investments;
- i) Competing undertaking: refers to actual or potential competitors;
- i) Party: Undertakings parties to the agreement and the connected undertakings thereof,

j) Specialization agreement: refers to the unilateral and reciprocal specialization agreements and joint production agreements described in article 5 of this Communiqué,

k) Specialization product: refers to the product produced under a specialization agreement.

l) Production: refers to the manufacture of goods or preparation of services, including production by way of subcontracting;

m) Product: refers to intermediary goods and/or services as well as final goods and/or services, with the exception of distribution and rental services;

(2) For the purposes of this Communiqué, connected undertakings refers to

a) those undertakings which, directly or indirectly, has, over an undertaking party to the agreement, the power to exercise more than half of the voting rights, 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, as well as to those undertakings over which the aforementioned undertakings and the undertakings parties to the agreement have the rights and powers listed above;

b) those undertakings in which parties to the agreement and/or their connected undertakings or one or more of those together with third parties jointly have the specified rights or powers, either directly or indirectly.

General conditions for exemption

ARTICLE 5 – (1) The exemption of this Communiqué shall apply to the following agreements

a) "Unilateral specialization agreements", where one of the parties which are active in the same product market agrees to fully or partly cease production of certain products or refrain from producing those products and to purchase those products from a competing undertaking, and at the same time, the competing undertaking agrees to produce or supply those products,

b) "Reciprocal specialization agreements", where two or more undertakings which are active in the same product market agree, on a reciprocal basis, to fully or partly cease or refrain from producing certain but different products and to purchase these products from the other parties, who agree to produce and supply them,

c) "Joint production agreements", where two or more parties which are active in the same product market or which wish to enter a product market via a specialization agreement agree to produce certain products jointly.

(2) The exemption specified by this Communiqué shall also apply to the following situations:

a) Where the parties agree to an exclusive purchase or an exclusive supply obligation,

b) Where the parties agree to distribute the products covered by the agreement jointly, instead of selling them independently.

(3) The provisions of this Communiqué shall also apply to ancillary provisions which are directly related and necessary for the implementation of the agreements, such as those concerning the transfer of intellectual property rights or granting licenses to one or more of the parties, provided that those provisions do not constitute the primary object of such agreements.

Circumstances which take specialization agreements out of the scope of the block exemption

ARTICLE 6 – (1) Specialization agreements that include the following restrictions which aim to restrict competition directly or indirectly may not benefit from the exemption granted by this Communiqué

a) The fixing of prices when selling the products to third parties, excluding immediate customers in the context of joint distribution,

b) Allocation of markets or customers,

c) The limitation of production amounts or sales.

(2) However, it is possible to include provisions related to the setting of output amounts in the context of unilateral or reciprocal specialization agreements containing the limitations listed in

sub-paragraph (c) of the above paragraph, or to set production capacity and production amounts in the context of joint production agreements and to set sales targets in the context of joint distribution.

Market share threshold

ARTICLE 7 – (1) The exemption specified in article 5 shall be applicable provided the total market shares of the parties do not exceed 25 per cent in any of the relevant markets.

Application of the market share threshold

ARTICLE 8 – (1) Following principles shall apply for the purposes of the application of the market share threshold provided in article 7

a) Market share shall be calculated on the basis of the market sales value. If 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 relevant parties.

b) 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 sub-paragraph (b) of the connected undertakings definition in the second paragraph of article 4 shall be apportioned equally to each undertaking having the rights or the powers listed in sub-paragraph (a).

ç) If the market share is initially not more than 25 per cent but subsequently rises above the threshold without exceeding 30 per cent, the exemption shall continue to apply for a period of 2 years following the year in which the market share threshold of 25 per cent was first exceeded.

d) If the market share is initially not more than 25 per cent but subsequently rises above 30 per cent, the exemption shall continue to apply for the year following the year in which the threshold of 30 per cent was first exceeded.

e) The benefits provided by sub-paragraphs (ç) and (d) may not be combined so as to exceed a period of 2 calendar years.

Revocation of the exemption

ARTICLE 9 – (1) Competition Board may revoke the exemption if it determines that an agreement which has been granted an exemption under this Communiqué has effects incompatible with the conditions listed in article 5 of the Act. In this case, Competition Board shall request the written and/or oral opinions of the parties before rendering its final decision.

Application of article 6 of the Act

ARTICLE 10 – (1) Exemption granted under the provisions of this Communiqué shall not prevent the application of article 6 of the Act.

Existing agreements

PROVISIONAL ARTICLE 1 – Agreements signed before the date on which this Communiqué entered into force and which are in compliance with the conditions regulated by the Communiqué shall be deemed to be covered by the Communiqué.

Entry into Force

ARTICLE 11 – (1) This Communiqué shall enter into force on the date of its publication.

Execution

ARTICLE 12 – (1) The President of the Competition Authority shall execute the provisions of this Communiqué.