

Serbia: Competition New Decrees on Block Exemptions

Even though the Serbian competition protection legislation has contained prohibition of both vertical and horizontal restrictive agreements since 2005, until recently there had been no regulation on block exemptions. As a result, market participants were facing great legal uncertainty. For example, practically every distribution agreement (apart from de minimis ones) could have been caught by the prohibition. Consequently, traders were forced to seek individual exemptions. Needless to say, this imposed significant administrative burden and cost on doing business in Serbia.

On 13 March 2010, three decrees dealing with block exemptions entered into force. Two of those decrees¹ address horizontal restrictive agreements and the third one² deals with block exemptions to vertical restrictive agreements.

Block exemptions can be obtained under certain conditions for (i) agreements on specialisation (unilateral specialisation agreements, mutual specialisation agreements, and agreements on joint production) and (ii) specified categories of R&D agreements between parties who are not competitors. An R&D agreement providing for joint commercial exploitation of the R&D results can enjoy protection for as long as the combined market share of the parties to the agreement does not exceed 25%. If after the conclusion of the R&D and joint exploitation agreement the combined market share of the parties exceeds 25% but does not exceed 30%, the block exemption will remain valid for a period of two years following the year in which the threshold has been exceeded. If the combined market share reaches any point between 30% and 40%, the block exemption protection remains valid for a period of one year following the year in which the 30% threshold has been exceeded. Going beyond the 40% threshold results in automatic loss of the block exemption protection.

The following vertical agreements qualify for block exemption: i) agreements on exclusive distribution; ii) agreements on exclusive customer allocation; iii) agreements on selective distribution; iv) agreements on exclusive purchase; v) agreements on exclusive sale; vi) agreements on commercial agency; vii) franchising agreements; and viii) certain agreements on transfer of intellectual property rights, in each case if, inter alia, the market share of neither of the parties to the agreement exceeds 25%. Vertical agreements between competitors may not be exempted except under certain specific conditions. Furthermore, vertical non-compete clauses may have a maximum duration of five years whereas post-termination restrictive covenants cannot be longer than one year, except under certain specific conditions.

Parties to the existing restrictive agreements which do not qualify for any of the aforementioned block exemptions will have to renegotiate the terms of their agreements by 13 June 2010 in order to make the agreement compliant with the conditions for block exemptions or else would need to apply for individual exemptions.

¹ Uredba o sporazumima o istraživanju i razvoju između učesnika na tržištu koji posluju na istom nivou proizvodnje ili distribucije koji se izuzimaju od zabrane, Sl. Glasnik RS br. 11/2010;

Uredba o sporazumima o specijalizaciji između učesnika na tržištu koji posluju na istom nivou proizvodnje ili distribucije koji se izuzimaju od zabrane, Sl. Glasnik RS br. 11/2010;

² Uredba o sporazumima između učesnika na tržištu koji posluju na različitom nivou proizvodnje ili distribucije koji se izuzimaju od zabrane, Sl. Glasnik RS br. 11/2010;

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