

GOVERNMENT OF GEORGIA

REGULATION No 526

1 September 2014

Tbilisi

On Exemptions from Prohibition on Competition Restricting Agreements

Article 1. The attached document on Exemptions from Prohibition on Agreements Restricting Competition shall be approved under Article 12(1) of the Law of Georgia on Normative Acts and Article 9(3) of the Law of Georgia on Competition.

Article 2. This Regulation shall take effect after January 1, 2015.

Prime Minister

Irakli Garibashvili

Exemptions from Prohibition on Agreements Restricting Competition

Chapter I

General Provisions

Article 1- Objective

1. The Regulation on Exemptions from Prohibition on Agreements Restricting Competition defines exemptions from the agreements that restrict competition in the relevant markets.
2. This Regulation intends to prevent prohibition of agreements that facilitate improvement of production and/or supply, technical and economic progress, and ensure the promotion of consumer welfare.

Article 2- Definition of terms

1. For the purposes of this Regulation, the terms have the following meanings:
 - a) 'Agreement restricting competition' - an agreement, a decision, and a concerted practice within the meaning of Article 7 of the Law of Georgia on Competition;
 - b) Distributor – Any undertaking purchasing goods covered by vertical agreement (goods or services) with an intention to resell them at the wholesale or retail level. Also an undertaking, which sells goods covered by the vertical agreement on behalf of the supplier as at the wholesale as well as at retail level);
 - c) 'Intangible assets' - trademarks, assets and know-how protected by the Law of Georgia on Copyright and Neighbouring Rights and by the Law of Georgia on Patents;
 - d) Selective distribution system - a distribution system where the supplier takes responsibility to sell the subject of vertical agreement (goods or services), both directly and indirectly, only to those distributors who are chosen by him/her in advance by a reasonable and objective criteria. In addition, the latter undertake not to sell goods or not to provide services to those distributors who are not selected in accordance with criteria established by the supplier on the territory defined by the supplier;
 - e) 'Know-how' - a package of non-patented practical information resulting from experience or testing, and which is secret, substantial and identified.
2. Other terms used in this Regulation have the meanings defined in the Law of Georgia on Competition ('the Law').

Article 3 – Exclusion from exemptions

This Regulation and exemptions shall not apply to agreements restricting competition if under the agreement the parties agree on:

- a) Directly or indirectly fix purchase or selling prices or any other trading conditions (Fixation);
- b) Dividing up the markets or sources of supply, in terms of customers, territory or other characteristics;

Article 4 – Preconditions for applying exemptions

Considering public and the state interests, the prohibition provided for in Article 7 of the Law shall not apply to an agreement if it meets the following conditions:

- a) Promotes production and/or supply, and/or technical - economic progress, at the same time ensures growth of welfare of the customers;
- b) Does not set restrictions that are not associated with the attainment of the objectives provided for in sub-paragraph (a) of this article for contracting undertakings;
- c) Does not allow undertakings to eliminate competition in a substantial part of the relevant market;
- d) Falls within the groups of agreements defined in Article 5 of this document.

Article 5 - Groups of agreements to which exemptions apply

1. This Regulation shall apply to vertical agreements that contain:

- a) Agreements between distributor undertakings;
- b) Agreements between undertakings operating in a motor vehicle sector.

2. In cases of horizontal and/or vertical agreements, the Regulation shall apply to:

- a) Technology transfer agreements;
- b) Specialisation agreements;
- c) Joint research agreements.

Chapter II

Vertical Agreement between Distributor Undertakings

Article 6 - Agreements between distributor undertakings

1. The restrictions laid down in Article 7 of the Law shall not apply to vertical agreements between undertakings that restrict competition but meet the conditions defined in Article 4 of this Regulation and this Chapter.

2. Undertakings may apply the exemption provided for in the first paragraph of this article only if the parties to a transaction are distributors and the annual turnover of each of them (with related persons) does not exceed GEL 15 000 000 during the last fiscal year, and if the parties to the agreement are non-competing undertakings as defined in the Law.

3. The exemption provided for in the first paragraph of this article shall apply to vertical agreements on the transfer or joint use of intangible assets.

4. Undertakings may apply the exemption provided for in the first paragraph of this article if one of the parties is a manufacturer, which delegates the right of retail trade to one or more undertakings, and at the same time it is obvious that the undertakings, by exercising the right of trade, act in the interests of a manufacturer.

Article 7 - Circumstances not permitting application of exemptions to agreements concluded between distributor undertakings

1. Undertakings may not exercise the right granted under Article 6 of this Regulation if an agreement concluded between them contains:

- a) A direct or indirect restriction of competition for an unspecified period, or for more than five years in the case of a specified period;
- b) A direct or indirect restriction on a party to manufacture or to sell certain products and/or services after the agreement expires;
- c) A direct or indirect restriction on a party to purchase or sell, within its system, the products/services of another undertaking competing with the supplier, even when one of the parties of agreement is a member of the selective distribution system;
- d) Imposing territorial, consumers or other restrictions to the parties, except:
 - d.a) Imposing restrictions to the members of selective distribution to sell goods or services to the undertaking, which do not comply the requirements for membership in the distribution system;
 - d.b) Restriction of active sales in an exclusive territory or to an exclusive customer group, which the supplier has reserved for itself or has allocated to another buyer;
 - d.c) Restricting the buyer's ability to sell components that are supplied for the purposes of integrity of the system to those users, who want to use them for production the same goods, which produces supplier;
 - d.d) Imposing restriction to the purchaser by the supplier, which means the restriction of the retail sales to the end-user by the buyer, if the buyer is the wholesale trader;
- e) Imposing restriction at the retail level to the member operating on selective distribution system to sell goods or services to the final consumer chain, with the exception of the cases when such a prohibition applies to restrictions on economic activities outside the selective distribution system;
- f) The restriction of cross-supplies between distributors of selective distribution system, including the distributors, which operate at different levels of trade.

2. For the purposes of this document, the case specified in paragraph 1(a) of this article shall include agreements where parties agree to treat silence as a form of acceptance when it concerns extension of an agreement for an indefinite term after five years.

3. The conditions in paragraph 1(b) of the first paragraph of this article shall not be considered as forbidding the application of exemptions if the prohibitions imposed in the agreement by one party to the other:

- a) Are necessary to protect the know-how transferred by the supplier to the other party under the agreement;
- b) Are valid for a maximum period of one year after the agreement expires;
- c) Only apply to goods or services that were the subject of an agreement, and a supplier or manufacturer exercised exclusive powers on those goods or services;

d) Only apply to immovable property that was used by the other party to fulfil obligations under the agreement.

Article 8 - Defining a substantial part of the market

1. When considering agreements defined in Article 6 of this Regulation, 30% of the relevant market shall be considered to be a substantial part of the market.
2. When estimating the market share of a supplier, account shall be taken only of those product boundaries of the market that cover the products supplied to the other party of an agreement.
3. Market shares shall be determined on the basis of the last fiscal year's data.
4. If, at the moment of concluding an agreement, competition is restricted in not more than 30% of the relevant market and its rate will increase up to 40% before the agreement expires, the effect of the provisions of this Chapter and the legal outcomes provided for by these provisions shall remain unchanged.
5. If, at the moment of concluding an agreement, competition is restricted in not more than 30% of the relevant market and its rate will be more than 40% of the relevant market, before the agreement expires, the legal outcomes provided in this Chapter shall remain unchanged for one year after the moment that the threshold is exceeded. When a period of one year expires, the prohibitions provided for in Article 7 of this Law shall apply to such agreements.

Article 9 - Annual turnover of undertakings

1. The annual turnover defined in Article 6(2) of this Regulation shall be calculated based on the total amount of the last year's turnover of contracting undertakings and the undertakings related to them, less any taxes and discounts. In addition, in the annual turnover is not included the agreements between undertakings of vertical agreements or their related agreements.
2. If contracting undertakings meet the requirements for annual turnover provided for in Article 6(2) of this Regulation and will not exceed by 10% to this limit during the two subsequent fiscal years the exemptions provided for in this resolution remains unchanged.

Chapter III

Vertical Agreements between Undertakings in the Motor Vehicle Sector

Article 10 - Vertical agreement on sale or resale or service of new motor vehicles

1. The restrictions provided for in Article 7 of the Law shall not apply to vertical agreements which is related to buy, sale or resale of new vehicles and spare parts for vehicles. Also providing of vehicle repairs and maintenance.
2. To apply the exemption provided for in the first paragraph of this article, beneficiary undertakings shall meet the requirements provided for in Chapter 2 of this Regulation, except for the requirements related to distributors; in addition, there shall be no circumstances specified in Article 11.

Article 11 - Circumstances preventing the application of exemptions to the agreements concluded in the motor vehicle sector

Undertakings, despite their shares in the relevant market and their annual turnover may not apply the exemption specified in Article 10 of this Regulation, if by concluding an agreement, they directly or indirectly, aim to:

- a) Prohibit selling of motor vehicle spare parts to independent workshops that use these spare parts for repair or for their technical service provision;
- b) Allow a vehicle manufacturer to set conditions for suppliers of original spare parts necessary for manufacturing vehicles that restrict these suppliers from putting clearly seen trade marks or other identification marks on supplied vehicle parts.

Chapter IV Technology Transfer Agreements

Article 12 - Concept of a technology transfer agreement

1. A technology transfer agreement shall be an agreement concluded between two undertakings under which one party transfers technology licensing rights to the other party in order to permit the latter to produce on its own the product with which the licensing right is associated; Meantime the agreement shall meet the conditions laid down in Article 4 of this document and in this Chapter.

2. Technology licensing rights shall be:

- a) Patents;
- b) Registered design;
- c) Topographies;
- e) Know-how.

Article 13 - Applying exemptions to technology transfer agreements

1. The prohibitions provided for in Article 7 of the Law shall not apply to technology transfer agreements concluded between undertakings.

2. The exemption provided for in the first paragraph of this article with respect to a specific agreement shall apply for the period of time for which the technology licensing right that is the subject of an agreement is valid.

3. If know-how is transferred under a licensing agreement, the exemption shall be in force for so long as the know-how is kept secret. If a recipient of the know-how discloses the secret, the exemption shall apply until the agreement expires.

4. The exemption provided for in the first paragraph shall also apply to products that are the subject of an agreement, because it is impossible to attain the objectives of the licensing conditions and the licensing agreement without their transfer.

Article 14 – Prohibiting the application of exemptions to technology transfer agreements

A technology transfer agreement may not be considered as an exemption provided for in Article 13 of this Regulation if (directly or indirectly):

- a) Deprives at least one of the competing undertakings of the possibility to set a product price in its own discretion; in the case of non-competing undertakings, this sub-paragraph shall not apply to setting the highest price, or recommending a price;
- b) Deprives at least one of the competing undertakings of the opportunity to conduct research and development work, except those cases, when such restriction provides protection for the licensed know-how;
- c) Is settled a restriction for an undertaking in terms of geographic area, consumers, sources of supply, etc.

Article 15 - Concept of a substantial part of the market for technology transfer agreements

1. If contracting parties are competing undertakings, a substantial part of the market provided for in Article 4(c) of this document shall be 20% or more of the combined share of the relevant market of the contracting undertakings.
2. If the parties to the agreement are non-competing undertakings, a substantial part of the market shall be 30% or more of the relevant market for each contracting undertaking.
3. A share of an undertaking shall be calculated on the basis of the last fiscal year data.

Chapter V

Specialisation Agreements

Article 16 - Concept of a specialisation agreement

1. Specialisation agreements defined in this document may be unilateral or reciprocal.
2. Undertakings operating in the same market may conclude an agreement by virtue of which one party agrees to produce, cease production or to purchase products from the other party of the agreement, provided that the latter will produce and supply this product to the former (unilateral specialisation).
3. Undertakings operating in the same market may conclude an agreement by virtue of which on a reciprocal basis parties agree to produce, cease production or to purchase different products from each other, provided that one party will produce and supply the other with the products that the latter refused to produce or expressed readiness to purchase them from the former (reciprocal specialisation).

Article 17 - Applying exemptions to specialisation agreements

1. The prohibitions provided for in Article 7 of the Law shall not apply to specialisation agreements if they meet the conditions provided for in Article 4 of this Regulation and this Chapter.

2. Undertakings may apply the exemptions provided for in the first paragraph of this article if under a specialisation agreement the parties:

- a) Agree to be only a supplier or a recipient of the product that is the subject of the agreement;
- b) To jointly, rather than unilaterally sell the subject of specialisation (the product).

Article 18 - Circumstances preventing the application of exemptions to specialisation agreements

1. The exemption provided for in Article 17(1) shall not apply to a specialisation agreement if it directly or indirectly or based on the circumstances that may be affected by the parties, intends to:

- a) Set the selling price of a product for third parties;
- b) Divide up markets and consumer groups.

2. Undertakings cannot benefit from the rights conferred by Article 17 of this document, among whom the agreement on specialisation is concluded for an unspecified period of time or if for a specified period of time, for more than a period of 5 years.

Article 19 – A substantial part of the market for specialisation agreements

1. For specialisation agreements, a substantial part of the market shall be more than 20 % of the relevant market.

2. Undertakings may apply the exemption provided for in Article 17(1) only if their joint share in the corresponding market does not exceed 20%.

Chapter VI

Joint Research Agreements

Article 20 - Applying exemptions to joint research agreements

1. Undertakings may agree to conduct joint research to analyse the market, to create a new product, to draft a future specialisation agreement, etc. This may involve mutual accessibility and sharing of licences, patents, know-how, copyright, trademarks, as well as other intangible and tangible assets.

2. The prohibition provided for in Article 7 of the Law shall not apply to agreements specified in the first paragraph of this article, provided that these agreements meet the conditions laid down in Article 4 of this Regulation and in this Chapter.

Article 21 - Circumstances for applying exemptions to joint research agreements

1. Undertakings may apply the exemptions provided for in Article 20 only if the agreement clearly states that each party shall have an unlimited access to the findings after the research is completed.

2. Access defined in in the first paragraph of this Article applies to the knowledge gained from research rather than to the manufactured product.

3. Except for the conditions defined in the first and second paragraphs, an agreement:

- a) Shall not prohibit alienation of the research results to third parties after the research is completed;

b) Shall not set a selling price in advance for a product defined in sub-paragraph (a) of this paragraph.

Article 22 – Substantial part of the market and term of an agreement

1. For the agreements regulated by this Chapter, a substantial part of the relevant market defined in Article 4(c) shall be 25% of the relevant market.
2. If an agreement meets all conditions provided for in this Chapter, the exemption shall apply from the date of its entry into force and shall continue to apply for seven years from the time the goods or processes covered by the agreement are first placed on the market.
3. If, after an agreement has been concluded, the combined share of the contracting parties in the relevant market exceeds 25% but is not more than 30%, the legal consequences provided for by the second paragraph of this article shall remain the same.
4. If, after an agreement has been concluded, the combined share of the contracting parties exceeds 30%, the exemption shall apply to this agreement for the period of one year after this circumstance is detected.

Chapter VIII Transitional Provisions

Article 23 - Effective period of the Regulation

1. This Regulation shall apply to agreements that will be concluded before 31 December 2024;
2. This Regulation shall also apply to agreements concluded before the entry into force of this Regulation;
3. In case of excess of the turnover and value of market share threshold of the agreements defined in this Regulation, the date of this excess will be the date when this Regulation enters into force.