Approved by the Decision of the
Plenum of the Competition Council
No 13 of August 30, 2013

REGULATION
on the assessment of vertical anticompetitive agreements

This Regulation is developed based on art.6 para (3), art.46 para (6) c) of the Law on competition No183 of 11.07.2012 (further Law) and transpose the provisions of the Regulation (EU) No330/2010 of Commission of 20.04.2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, published in Official Journal L102 of 23.04.2010; and transpose partially Commission Communication 2004/C 130/01- Guidelines on Vertical Restraints, published in Official Journal C 130 of 19.05.2010; Commission Communication 2004/C101/108 - Guidelines on the application of Article 81(3) of the Treaty, published in OJ 101/97 of 27.04.2004; Commission notice of 18 December 1978 concerning its assessment of certain subcontracting agreements in relation to Article 85 (1) of the EEC Treaty, published in OJ C1 of 31.01.1979.

I. GENERAL DISPOZITIONS

1. This Regulation is applied on:
1) establishing vertical agreements not covered by Law;
2) assessment of vertical agreements under Article 5 of Law;
3) individual exemption of vertical agreements under Article 6 para (1) of the Law;
4) block exemption of the vertical agreements under Article 6 para (3) of the Law;
5) withdrawal of block exemption of the vertical agreements Article 6 para (6) of the Law.

2. Block exemption beneficiary established by this Regulation is limited to vertical agreements which meet the conditions set out in Article 6 para(1) of the Law

II. Definitions

3. For the purposes of this Regulation, the following definitions shall apply:
agent - natural or legal person authorized to negotiate and / or conclude contracts on behalf of another person (principal), either individually or on behalf of the principal, in order to:
1) purchase of goods by principal or
2) sale products supplied by the principal;
subcontracting agreement – concluded agreement or is not as the result of an order from a third party, under which an undertaking called "contractor" entrusts another undertaking called "subcontractor" in accordance with his instructions, the

manufacture of goods, the provision of services or execution of works for the contractor or performed on his behalf;

buyer - includes an undertaking which, under an vertical agreement falling within Article 5 of the Law, sells goods on behalf of another undertaking;

customer of the buyer - means an undertaking not party to the agreement which purchases the contract goods from a buyer which is party to the agreement;

final consumer – natural person or legal entity that purchases the products in personal aims, without the aim to resell them;

intellectual property rights - includes industrial property rights, know how, copyright and neighbouring rights;

constraint on resale price - the agreements or concerted practices which have direct or indirect object is the establishment of a fixed or minimum resale price (minimum price for resale) or a maximum or below the maximum threshold, so that the buyer is obliged to apply it (maximum price for resale);

suggested resale price - the price that the supplier / reseller recommends to the retail recommends to apply;

Parallel import - the situation when a product protected by a trademark, for sale in a particular country but is sold without the author's trademark in another country with higher prices. Such a situation would require that when the goods purchased from an exclusive distributor for commerce in a country where imported goods are cheaper than in a country where the goods are more expensive and thus compete with goods sold by exclusive distributors in country;

For the purposes of this Regulation, the terms '**undertaking**', '**supplier**' and '**buyer**' shall include their respective connected undertakings.

know-how - means a secret, substantial and identified package of non-patented practical information, resulting from experience and testing by the supplier: in this context, 'secret' means that the know-how is not generally known or easily accessible; 'substantial' means that the know-how is significant and useful to the buyer for the use, sale or resale of the contract goods or services; 'identified' means that the know-how is described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;

non-compete obligation - means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than 80 % of the buyer's total purchases of the contract goods or services and their substitutes on the relevant market, calculated on the basis of the value or, where such is standard industry practice, the volume of its purchases in the preceding calendar year;

fair share – implies that the transmission of benefits must at least compensate the actual or probable negative impact on consumers due to the prevention, restriction or distortion of competition found under Article 5 of the Law;

vertical restraint - means a prevention, restriction or distortion of competition in a vertical agreement falling within the scope of Article 5 of the Law;
severe vertical restraints of competition - serious vertical restraints are: imposed minimum resale price, certain restrictions on the circle of consumers or territory where the buyer can sell products; restrictions addressed to members of a selective distribution system or to the final consumer and restrictions on cross supplies on selling the components as spare parts to final consumers;
parallel networks of similar vertical agreements - parallel networks of vertical agreements containing restrictions which produce similar effects on the market;
selective distribution system - a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorized distributors within the territory reserved by the supplier to operate that system;
exclusive distribution system - distribution system where the supplier agrees to sell his products only to one distributor for resale on a given territory. Meanwhile, active sales of the distributor in other areas (exclusively allocated) are usually limited;
active sales - sales made by active approaching of a defined clientele or to customers from a specific territory allocated exclusively to another distributor through advertising and publicity in the media or by other means of promotion for the group clients or customers territory; creating a warehouse or point of sale in another distributor's exclusive territory;
passive sales - sales based on unformulated requests from individual customers; sales generated by any advertising or promotional event or in the media or on the Internet picked up by the customers set up on exclusive territories belonging to other distributors or clients assigned to other distributors, but which are a reasonable way to reach customers outside such territories or customer groups.
4. Undefined notions of point 3 have the meaning given in the Law.

III. VERTICAL AGREEMENTS, WHICH GENERALLY FALL OUTSIDE THE SCOPE OF PARA (1) OF THE ARTICLE 5 OF THE LAW

5. The provisions of Article 5 para (1) of the Law does not apply to vertical agreements of minor importance which fall under article 8 of the Law, agency contracts and subcontracts.
6. The exemption stipulated in point4 of this regulation for vertical agreements of minor importance under article 8 of the Law will be applied taking into account the provisions of Article 9 of the Law.
7. In the meaning of Article 5 para (1) of the Law, an agreement is considered proper agency contract where the contract goods bought or sold property does not belong to the agent, or if the agent does not himself supply the contract services and agent:

1) does not contribute to the costs of supply / purchase contract goods or services, including the costs of transporting the goods. This does not preclude the agent to carry out the transport service, on conditions that the costs are borne by the principal;
2) does not maintain at its own cost or risk stocks of the contract goods, in particular, does not bear the cost of financing inventories and can return the principal without charge, unless the agent is liable for fault;
3) does not undertake responsibility towards third parties for damage caused by the product sold, unless, as agent, it is liable for fault in this respect;
4) does not take responsibility for customers' non- performance of the contract, with the exception of the loss of the agent's commission, unless the agent is liable for fault;
5) is not, directly or indirectly, obliged to invest in sales promotion, such as contributions to the advertising budgets of the principal;
6) does not make market-specific investments in equipment, premises or training of personnel;
7) does not undertake other activities within the same product market required by the principal, unless these activities are fully reimbursed by the principal.
8. The exemption stipulated in point 4 is applied to agency contracts only to clauses considered to form inherent part of an agency agreement and namely:
1) limitations on the territory in which the agent may sell these goods or services;
2) limitations on the customers to whom the agent may sell these goods or services;
3) the prices and conditions at which the agent must sell or purchase these goods or services and only if the risks of this activity is at the principal expense and covers:
4) direct risks related to contracts concluded and / or negotiated by the agent on behalf of the principal;
5) risks related to market-specific investments. These are investments specifically required for the type of activity that the agent has been designated by the principal, that are necessary to enable the agent to conclude and / or negotiate this type of contract;
6) risks related to other activities in the same product market, to the extent that the principal requires the agent to undertake such activities, but not as agent on behalf of the principal, but at its own risk.
9. The exemption stipulated in point4 of this regulation is applied to the clauses of the subcontracting agreement, which provides that:
1) technology or equipment provided by the contractor may not be used for purposes other than the purpose of the subcontracting agreement;
2) technology or equipment provided by the contractor may not be available to third parties;
3) products resulting from the use of technology or equipment in question can only be provided to the contractor or performed only in his name, on condition that, to the extent of such technology or equipment that are necessary to enable the subcontractor under reasonable conditions, to produce products in accordance with the instructions of the contractor. To that extent, the subcontractor providing

goods, services or works which does not appear as independent supplier in the market;
The above conditions are met when the execution of the subcontract requires the use of subcontractor:
4) of industrial property rights held by the contractor or are at his disposal in the form of patents, utility models and designs protected by copyright, registered designs or other rights, or
5) of technical knowledge and manufacturing processes which are secret (know-how) owned by or available to the contractor, or
6) of studies, plans or other documents accompanying the information provided, prepared by or for the contractor, or
7) of molds, patterns, equipment and accessory equipment owned by the contractor,
that, even without being the subject of industrial property rights or without being a secret, allows the manufacture of products that differ in form, function or composition of other products manufactured or supplied in the market.

IV. THE ASSESSMENT OF VERTICAL AGREEMENTS

10. The provisions of Article 5 para.(1) of the Law only is applied to vertical agreements which have as their object or effect the prevention, restriction or distortion of competition in the Republic of Moldova or its part.
11. In order to assess whether the agreements referred to in point 10, prevent distort or restrict competition, it is necessary to examine competition in the context in which it would occur in the absence of such agreement. During the assessment must take into account the impact of the agreement in question on competition between brands (between providers competing brands) and on **intra-brand** competition (**between distributors of the same brand**).
12. In applying the provisions set out in point 11 must be taken into account that Article 5 para (1) of the Law distinguishes agreements that have as their object the restriction of competition and agreements, which have the effect of restricting competition.
13. In order to determine whether an agreement has as its object the restriction of competition must be taken into consideration several factors, in particular the purposes of the agreement and its objectives. In addition, it may be necessary to examine the context in which the agreement is applied. Concrete ways of implementing the agreement may indicate a restriction by object even where it is not expressly provided for in the agreement. Proof of intention of the parties to restrict competition is a relevant factor but not a necessary condition.
14. If it is determined that a vertical agreement has the object of restricting competition, anti-competitive effects need not to be demonstrated
15. In case a vertical agreement does not have as an object competition restriction, then it should be examined whether the effects of competition restriction, taking into account the actual and potential effects. For an agreement to be restrictive by its effects it must affect actual or potential competition to such an extent that the

negative effects on prices, output, innovation or the variety or quantity of products in the relevant market to be determined with sufficient accuracy.

16. In order to analyze the effects of a restrictive vertical agreement is necessary to define the relevant market. In addition, where appropriate, it is necessary to examine and assess the market position of the parties, the existing position of competitors, the market position of buyers, the existence of potential competitors, the nature of the product, market maturity and the barriers to entry. However, in some cases, it is possible that anti-competitive effects can result directly from analysis of market conduct of the parties to the agreement.

17. Most of the vertical restraints of competition cause problems only when inter-brand competition is insufficient, one or more levels of trade, ie when there is some market power at the level of the supplier or the buyer or at both levels.

V. EXEMPTION OF THE VERTICAL ANTI-COMPETITIVE AGREEMENTS, BASED ON ART.6 PARA (1) OF THE LAW

18. The exemptions provided for in Article 6 para (1) of the Law are applied only in the case when it was shown that the agreement prevents, restricts or distorts competition within the meaning of Article 5 para (1) of the Law.

19. The assessment of the vertical restraints through the conditions set out in Article 6 para (1) of the Law, (hereinafter referred to conditions) is the assessment of the positive economic effects of vertical restraints. When favorable competitive effects of an agreement outweigh its anticompetitive effects, the vertical agreement is pro-competitive, and finally, is compatible with the Law.

20. Conditions assessment is carried reasonably and flexibly, taking into account the specific circumstances of each case.

21. During the assessment of the conditions which are met it is not made the distinction between vertical agreements whose object is the prevention, restriction or distortion of competition and vertical agreements whose effect is the prevention, restriction or distortion of competition.

22. Assessment of benefits flowing from restrictive vertical agreements is based on the relevant market to which the agreement relates. However, when two markets are related, the increase of efficiency can be considered, on condition that the group of consumers affected by the restriction and benefiting from the increase of efficiency is mostly the same.

23. Evaluation of restrictive vertical agreements under Article 6 para (1) of the Law is made within the actual context in which they appear on the basis of facts existing at a certain time determined by the following factors: scope and purpose of the cooperation, the competitive relationship between the parties and the measure on which they join activities which cumulatively form nature of the agreement. The assessment takes into account the major changes in the situation. If restrictive vertical agreement is irreversible, assessment must be made from the date of application.

24. The exemption provided for in Article 6 para (1) of the Law applies as long as the four conditions are met. Since the four conditions are cumulative, when it is

observed that one of them is not satisfied, it is not longer necessary to consider the other three.

25. In the meaning of the present Regulation, the order of exposure of the assessment framework of the second condition is reversed by the third, thus addressed the issue of indispensability before the transmission to consumers.

26. During the assessment of the contribution at improving the production or distribution of goods or promoting technical or economic progress, hereinafter efficiency categories are taken into account only the objective benefits, this means that the effectiveness is not evaluated from a subjective point of view of the parties.

27. In order to determine the objective benefits produced by the vertical agreement and what is the economic importance of each of the claimed efficiency, it is necessary to check the following:

1) the nature of the claimed efficiency;
2) the direct link between the vertical agreement and efficiency;
3) the probability and importance of the claimed efficiency;
4) How and when the claimed efficiency could be achieved.

28. Since there is, a significant overlap between the various categories of efficiency, referred to in point 25 of this Regulation, it will be carried distinction between the cost efficiency and efficiency of a qualitative nature that creates value in the form of new or improved products, a greater variety of products etc.

29. If the cost efficiency achieved is invoked, organizations seeking the benefit of Article 6 para (1) of the Law, must calculate or estimate the efficiency amount and describe in detail the calculation in the same row with the ways in which that efficiency has been or will be obtained. The information listed must be verifiable in order to establish with certainty that the efficiencies have been or will be obtained.

30. If efficiency takes the form of new or improved products or other types of qualitative, undertakings invoking the benefit of Article 6 para (1) of the Law must describe and explain in detail the nature of efficiency and why they are a objective economic benefit.

31. If the vertical agreement has not yet been fully implemented, the parties must justify any prediction on the date on which efficiency will have significant positive impact on the market.

32. Assessment of vertical restraints indispensable character is related with the fact that restrictive vertical agreement does not impose restrictions, which are not indispensable to the acquisition efficiency of achieving vertical agreement. Such assessment shall be made by considering, first, the condition that the vertical agreement must be strictly necessary for achieving efficiency; secondly, the prevention, restriction or distortion of competition arising from the agreement is necessary for its acquisition. The decisive factor is to determine whether the restrictive agreement and restrictions shall allow or not to perform the activity in question more efficiently than it would have been in the absence of agreement or restriction in question.

33. In order to carry out the assessment described in point32 must be taken into account market conditions and commercial realities at which the parties of the agreement are exposed, in particular market structure, economic risks related to the agreement and the incentives at which the parties of the agreement are exposed. It is relevant to examine whether the parties took into consideration the given circumstances:

1) efficiency could be achieved according to the first condition of Article 6 para. (1) a) of the Law, through other less restrictive agreement, and if so, at what point might be achieved claimed efficiency;

2) could the efficiency be obtained on its own.

In this regard, the parties to the agreement must explain and justify why the same efficiency could not be achieved by internal growth.

In assessing the condition of the restrictive vertical agreement must be necessary in order to obtain efficiency, is important to determine which is the minimum level of efficiency in that market, i.e. the necessary production level in order to minimize costs and to exhaust economies of scale. The higher is the minimum level of the efficiency compared to the actual size of one of the parties to the agreement, the more likely the achieving of efficiency will be considered specific to the agreement.

34. If it is found that the vertical agreement in question is necessary to achieve efficiency, it must be demonstrated the indispensability of each constraints to competition resulting from vertical agreement. In this context, it must be assessed whether individual restrictions are necessary to achieve efficiency. The parties to the agreement must justify their claim, both in the nature of the restriction, as well as its intensity.

35. A vertical restraint is essential if its absence would eliminate or significantly reduce the efficiency of the vertical agreement or arising from it far less likely that they will materialize. Evaluation of alternative solutions must take into account actual and potential improvement of competition by eliminating restrictions or apply a less restrictive alternative.

36. In certain cases, a restriction may be indispensable for a period of time, in which case the exemption provided for in Article 6 para (1) of the Law shall be applied only for a certain period.

37. The decisive factor in **assessment of the consumers insurance with a fair share of the resulting benefit** is the overall impact on consumer products on the relevant market and the impact on individual members of this class of consumers.

38. Consumers should not necessarily receive a part of each efficiency category identified under the first condition. It is enough to be sent benefits sufficient to offset the negative effects of restrictive vertical agreement. If a restrictive agreement could lead to higher prices, than consumers must be fully compensated by higher quality or other benefits. Otherwise, the second condition of Article 6 para (1) of the Law is not met. The greater the prevention, restriction or distortion of competition stipulated in Article 5 para (1) of the Law, the greater efficiency and transmission of severance benefits to consumers have to be.

39. In certain cases is necessary a certain period before the materialization efficiency. Before that time, the consent can only have negative effects. The fact that transmission to consumer occurs late does not exclude the application of Article 6 para (1) of the Law. However, on how the delay is greater, the greater must be the efficiency for the covering of consumers' losses during the preceding transmission. Thus, for caring out the assessment, it should be taken into consideration that for the consumers, the value of the future gain is the same as that of a current gain. In order to ensure an objective comparison, the value of future gains must be updated. The discount rate applied must reflect the rate of inflation, and lost interest.

40. In other situations, the vertical agreement allows the parties to obtain efficiency earlier than it would otherwise be possible, which requires to take into account the negative impact on consumers on the relevant market after the expiry of that period.

41. In the case of defense enterprises have only to justify the statements, making available estimates and other information, taking into account the circumstances of each case: transmission of efficiency resulted in costs and / or transmission of other types of efficiency, especially existence of new improved products.

42. The last condition stipulated in Article 6 para (1) d) of the Law considers the **existence of rivalry between undertakings an important factor of economic efficiency**, including dynamic efficiency in a form of innovations.

43. The fact of being or not eliminated competition in the meaning of the last condition depends on the degree of competition that exists prior to the agreement signing and the impact of restrictive agreement on competition, namely the reduction of competition by agreement. The application of this condition requires an analysis of the different constraints on competition on the market, the level of competitive constraints, which they impose on the parties during the agreement and the impact of the agreement on the competitive constraints, particularly examining the influence of various parameters of the agreement on competition.

44. While market shares are relevant, the importance of other sources of actual competition cannot be assessed solely on the basis of market share. The ability of incumbents to compete and their incentives to do so has to be examined.

45. The evaluation should take into account current and potential competition. Assessment of potential competition requires an analysis of the entry barriers faced by enterprises, which not yet compete in a relevant market. In support of any claims of the parties that the entry barriers are low, there must be information that identifies sources of potential competition and the parties must demonstrate why these constraints constitute a competitive constraint on the parties.

VI. APPLICATION OF THE BLOCK EXEMPTION BASED ON THE ART.6 PARA (3) OF THE LAW

46. This Regulation establishes a presumption of legality for vertical agreements falling under Article 5 para (1) of the Law, according to the market share of the supplier and the purchaser, provided that the vertical agreement that does not contain hardcore restrictions of competition which are restrictions of competition by object.

47. The supplier's market share on the market where it sells the contract goods and the buyer's market share on the market where it purchases the contract goods, which determine the applicability of the block exemption, stipulated in point 46. In order for the block exemption to apply, the supplier's and the buyer's market share must each be 30 % or less.

48. In the meaning of the point 46 where in a multi party agreement an undertaking buys the contract goods from one party to the agreement and sells the contract products to another undertaking party to the agreement, the market share of the first undertaking must comply with the share threshold provided in point 47, both as a buyer, as well as the supplier concerning the application of the exemption provided in point 46.

49. The exemption provided in point 46 is applied to vertical agreements, which contain provisions which relate to the assignment to the buyer or the use by the buyer of intellectual property rights, on conditions that those provisions do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods by the buyer or its customers. That exemption is applied on condition that, in concerned contractual products, the provisions must not contain hardcore restrictions.

50. Exemption provided in point 46 is not applied to vertical agreements signed between competing undertakings. However, the exemption is applied when competitors enter into a non-reciprocal vertical agreement and:

1) the supplier is a manufacturer and a distributor of goods, while the buyer is a distributor and not a competing undertaking, which acts as the manufacturer. or

2) the supplier is a provider of services at several levels of trade, while the buyer provides its goods or services at the retail level and is not a competing undertaking at the level of trade where it purchases the contract services.

51. This Regulation shall not be applied to vertical agreements. which are the subject of another block exemption regulation, unless otherwise provided in such a regulation.

VII. APPLICATION OF THE MARKET SHARE THRESHOLD

52. In order to applied the point 47 the definition of the relevant market will be in accordance with Chapter V of the Law.

53. Supplier’s market share is calculated based on the value of sales on the market and buyer’s market share is calculated based on the market purchases. If no information is available on the market values of sales or purchases on the market, can be used estimates based on other reliable market information, including market sales volume and acquisitions to determine the market share of the undertaking concerned.

54. Market shares are calculated based on the previous calendar year.
55. Supplier's market share includes any goods supplied vertically integrated distributors for sale.
56. If the market share is initially not more than 30% but subsequently rises above that level without exceeding 35%, the exemption provided for in Chapter VI of this Regulation shall continue to apply for a period of two consecutive calendar years following the year in which it was first exceeded 30% of market share.
57. If the market share is initially not more than 30% but subsequently rises above 35%, the exemption provided for in Chapter VI of this Regulation shall continue to apply during the calendar year following the year in which it was first time exceeded 35%.
58. The benefit of points 56 and 57 of this Regulation cannot be combined so as to exceed a period of two calendar years.

VIII. HARDCORE RESTRICTIONS, WHICH REMOVE THE BENEFIT OF THE BLOCK EXEMPTION

59. The exemption provided for in chapter VI shall not apply to vertical agreements, 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 buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;
2) the restriction of the territory into which, or of the customers to whom, a buyer party to the agreement, without prejudice to a restriction on its place of establishment, may sell the contract goods or services, except:
a) the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer,
b) the restriction of sales to end users by a buyer operating at the wholesale level of trade,
c) the restriction of sales by the members of a selective distribution system to unauthorised distributors within the territory reserved by the supplier to operate that system, and
d); the restriction of 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 restriction of active or passive sales to end users by members of a selective distribution system operating at the retail level of trade, without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorised place of establishment;
4) the restriction of cross-supplies between distributors within a selective distribution system, including between distributors operating at different level of trade;

5) the restriction, agreed between a supplier of components and a buyer who incorporates those components, of the supplier's ability to sell the components as spare parts to end-users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods.

60. Resale price maintenance can be carried out directly or indirectly.

61. Direct resale price maintenance occurs, in case of the direct fixing of resale prices in vertical agreements or through concerted practices

62. Indirect resale price maintenance occurs when: vertical agreements and concerted practices set the margin of distribution or maximum level of discount the distributor can grant to a prescribed price level, the granting of rebates or reimbursement of promotional by vendor compliance with a given price level, conditional stock price provided for resale price of competitors, threats, intimidation, warnings, penalties, delay or suspension of deliveries or contract terminations in relation to observance of a given price level.

63. Policy of restricting parallel imports which restricts the right retailer seller in active or passive sales in different countries is considered prohibited. Active sales restriction is permitted only in a specific territory allocated exclusively to a distributor.

This Regulation exempts vertical agreements falling under Article 5 para (1) of the Law if they do not contain any hardcore in point 59 under this Regulation, and that no such restriction is not exercised through these agreements. If there is at least one of the hardcore restrictions, the benefit of the block exemption is lost for the entire vertical agreement. There can be no severability for hardcore restrictions.

IX. EXCLUDED RESTRICTIONS

64. The exemption provided for in chapter VI of this regulation shall not apply to the following obligations contained in vertical agreements:

1) any direct or indirect non-compete obligation, the duration of which is indefinite or exceeds five years;

2) any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services;

3) any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers.

65. For the purposes of point 64 of the subpoint, 1) a non- compete obligation which is tacitly renewable beyond a period of five years shall be deemed to have been concluded for an indefinite duration.

66. By way of derogation from point 64 sub point 1, the time limitation of five years shall not apply where the contract goods or services are sold by the buyer from premises and land owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete obligation does not exceed the period of occupancy of the premises and land by the buyer.

67. By way of derogation from point 64 sub point 2), the exemption provided for in chapter VI shall apply to any direct or indirect obligation causing the buyer,

after termination of the agreement, not to manufacture, purchase, sell or resell goods or services where the following conditions are fulfilled:
1) the obligation relates to goods or services which compete with the contract goods;
2) the obligation is limited to the premises and land from which the buyer has operated during the contract period;
3) the obligation is indispensable to protect know-how transferred by the supplier to the buyer;
4) the duration of the obligation is limited to a period of one year after termination of the agreement.
68. Point 64 sub point 2) is without prejudice to the possibility of imposing a restriction, which is unlimited in time on the use and disclosure of know-how which has not entered the public domain.

X. PROCEDURE BLOCK EXEMPTION AND EXCLUSION FROM THE SCOPE OF THE BLOCK EXEMPTION

69. Presumption of legality conferred by Chapter VI of this Regulation shall be withdrawn if a vertical agreement, considered separately or in combination with similar agreements enforced by competing suppliers or buyers fall within the scope of Article 5 para (1) of the Law and not fulfills all the conditions set out in Article 6 para (1) of the Law.
70. Conditions for exemption provided for in Article 6 para (1) of the Law may not be the case in particular when access to the relevant market or competition therein is significantly restricted by the cumulative effect of parallel networks of similar vertical agreements practiced by suppliers or buyers competitors.
71. In determining whether the benefit of the block exemption to be withdrawn, are of particular importance anticompetitive effects that may result from the existence of parallel networks of vertical agreements having similar effects which significantly restrict access to a relevant market or competition in that market.
72. Competition Council may decide to exclude from the scope of Chapter VI of this regulation, parallel networks of similar vertical restraints when they cover more than 50% of a relevant market.
73. Responsibility for the cumulative anticompetitive effect can only be attributed only for enterprises, which contribute significantly to this effect. Agreements concluded by undertakings whose contribution to the cumulative effect is insignificant do not fall under the prohibition laid down in Article 5 para (1) of the Law and therefore they are not subject to withdrawal mechanism of benefit of the exemption.
74. During the withdrawal application procedure, the Competition Council has the burden of proving that the agreement falls within the scope of Article 5 para (1) of the Law and that the agreement fulfills all four conditions set out in Article 6 (1) of the Law. A decision to withdraw the exemption can only have ex nunc effect,

which means that the exempted status of the agreements is not affected only from the date on which the withdrawal enters in force.