**L.N. 150 of 1996**

# COMPETITION ACT, 1994
# (ACT No. XXXI OF 1994)

## Exclusive Purchasing Agreements (Block Exemptions) Regulations, 1996

IN exercise of the powers conferred by subsection (1) of section 8 of the Competition Act, 1994, the Minister for Economic Services, after consultation with the Commission for Fair Trading, has made the following regulations:–

Citation.

**1.** These regulations may be cited as the Exclusive Purchasing Agreements (Block Exemptions) Regulations, 1996.

Commencement and Termination.

**2.** These regulations shall come into force on the 1st August, 1996 and shall terminate on the 31st October, 1999.

Scope

**3.** These regulations specify the block exemption subject to such conditions and limitations and as applicable to categories of Exclusive Purchasing Agreements, decisions and practices in terms of subsection (1) of section 5 of the Act.

Interpretation.

**4.** For the purposes of these regulations, and unless the context otherwise requires:

"Act" means the Competition Act, 1994 which regulates competition and provides for fair trading in Malta;

"Commission" means the Commission for Fair Trading;

"Director" means the director of the Office for Fair Competition.

Block Exemption.

**5.** Agreements to which only two undertakings are party and whereby one party, the reseller, agrees with the other, the supplier, to purchase certain goods specified in the agreement for resale, exclusively from the supplier or from a connected undertaking or from another undertaking which the supplier has entrusted with the sale of his goods, shall be exempted from the provisions of subsection (1) of section 5 of the Act provided that no further restriction on competition other than the following shall be imposed:–

(a) that the supplier shall be obliged not to distribute the contract good or goods which compete with the contract goods in the reseller's level of distribution;

(b) that the sellers shall be obliged not to manufacture or distribute goods which compete with the contract goods.

**6.** The block exemption shall apply notwithstanding that the reseller undertakes any or all of the following obligations: Applicability.

(i) to purchase complete ranges of goods of similar nature;

(ii) to purchase minimum quantities of goods which are subject to the exclusive purchasing obligations;

(iii) to sell the contract goods under trade marks, or packed and presented as specified by the supplier;

(iv) to take measures for the promotion of sales, in particular–

(a) to advertise;
(b) to maintain a sales network or stock of goods;
(c) to provide customer and guarantee services;
(d) to employ staff having specialised or technical training.

**7.** The block exemption shall not apply where: Non-Applicability.

(a) both parties, including also parties connected within a group of undertakings, being suppliers of identical goods or of goods which are considered by users as equivalent in view of their characteristics, price and intended use enter into exclusive purchasing agreements between themselves in respect of such goods;

(b) the exclusive purchasing obligation is agreed for more than one type of goods where these are neither by their nature nor according to commercial usage connected to each other;

(c) the agreement is concluded for an indefinite duration or for a period of more than three years.

**8.** The Commission is hereby being granted the power to withdraw the benefit of this block exemption when it finds in a particular case, on a request by the Director, that an agreement which is exempted Commission's withdrawal.

by these regulations nevertheless does not contribute towards the objective of improving production or distribution of goods or promoting technical or economic progress and which does not allow consumers a fair share of the resultant benefit, and in particular where:

(a) the contract goods are not subject to effective competition from identical goods or goods considered by users as equivalent in view of their characteristics, price and intended use;

(b) access by other suppliers to the different stages of distribution is made difficult to a significant extent;

(c) the supplier without any objectively justified reason applies less favourable prices or conditions of sale to resellers bound by an exclusive purchasing obligation as compared with other resellers at the same level of distribution.

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