L.N. 152 of 1996

COMPETITION ACT 1994
(ACT NO. XXXI OF 1994)

Beer and other Beverages 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 Beer and other Beverages 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 Beer and other Beverages Exclusive Purchasing Agreements, decisions and practices in terms of subsection (1) of section 5 of the Act.

Interpretation.

4. In these regulations, unless the context otherwise requires:

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

"beer" means an alcoholic beverage obtained by fermenting a liquor prepared from malted grain (especially barley), water and (usually) hops. The addition of other flavouring substances is also permitted;

"Commission" means the Commission for Fair Trading;

"other beverages" means any other alcoholic and non-alcoholic liquid prepared for human consumption, other than beer as defined above;

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

"undertaking" includes an importer, manufacturer, wholesaler, agent, retailer or any person who is involved in any commercial activity whereby beer and/or beverages are sold or resold.

Block Exemption.

5. (1) Subject to the conditions set out in these regulations, subsection (1) of section 5 of the Act shall not apply to agreements to which only two undertakings are party and whereby one party, the reseller, agrees with the other, the supplier, to purchase only from the supplier or from another undertaking entrusted by the supplier with the distribution of certain beers and/or certain other beverages as specified in the exclusive purchasing agreement/s for resale in premises used for the sale and consumption of drinks therein as may be designated in the exclusive purchasing agreement/s.

(2) The provisions of paragraph (1) of this regulation shall also apply where exclusive purchasing obligations of the kind described in paragraph (1) are imposed on the reseller in favour of the supplier by another undertaking which is itself not a supplier.

Restriction on Competition.

6. Apart from the obligation described in regulation 5 of these regulations, no other restriction of competition shall be imposed on the reseller, other than:

(a) the obligation not to sell in or from the premises designated in the exclusive purchasing agreement, other beer and/or other beverages which are supplied by other undertakings and which are of the same type as the beer or the other beverages supplied under the exclusive purchasing agreement;

(b) the obligation, in the event that the reseller sells in the premises designated in the exclusive purchasing agreement, other beers which are supplied by other undertakings and which are of different type from the beers supplied under the agreement, to sell such other beers in refillable glass containers, cans, PVC (or other types of plastic) bottles, unless the sale of such beers in draught (two-way packaging) form is customary or is necessary to satisfy a sufficient demand from consumers.

Applicability.

7. Regulation 5 of these regulations shall apply notwithstanding that the reseller undertakes any or all of the following conditions:

(a) to purchase complete ranges of the beers and/or a complete range of other individual beverages supplied or which may be supplied by the supplier;

(b) to purchase minimum quantities of beers and/or other beverages which are subject to the exclusive purchasing obligations;

(c) to sell the beers and/or other beverages under trade marks;

(d) to sell the beers and/or other beverages bottled, packed, dispensed and presented, as specified by the supplier;

(e) to take measures for the promotion of sales of the beers and/or other beverages covered by the exclusive purchasing agreement/s, in particular:

(i) to advertise,

(ii) to maintain a sales network,

(iii) to maintain a stock of the beers and/or other beverages,

(iv) to provide customer and guarantee services,

(v) to employ staff having specialised or technical training,

(vi) to maintain specified minimum quality standards;

8. Regulation 5 of these regulations shall not apply where: Non-applicability.

(a) suppliers of identical beers and/or other beverages or of beers and/or other beverages which are considered by users as equivalent in view of their characteristics, price and intended use, enter into reciprocal exclusive purchasing agreements between themselves in respect of such goods;

(b) the exclusive purchasing obligation covers goods which are not beers and/or beverages;

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

(d) the supplier imposes on the reseller the condition of a minimum selling price of his products;

(e) the supplier imposes on the reseller any form of penalty other than the forfeiture of the benefits envisaged therein, for breach of the exclusive purchasing agreement;

(f) the supplier imposes on the reseller the condition to purchase more than one range of his products.

Withdrawal by Commission.

9. The Commission is hereby being granted the power to withdraw the benefit of this block exemption where it finds in a particular case, on a request by the Director, that an exclusive purchasing agreement which is exempted 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 supplier without any objectively justified reason, refuses to supply categories of resellers who cannot obtain the contract goods elsewhere on suitable terms or applies to them differing prices or conditions of sale;

(b) 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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