
STATUTORY INSTRUMENTS

2022 No. 1271

The Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022

Conditions, obligation and consequences of breach

Block exemption subject to conditions and obligation

4. The block exemption has effect in relation to an R&D agreement subject to the conditions specified in articles 5 to 8, 10 and 12 and the obligation specified in article 14.

Commencement Information

II Art. 4 in force at 1.1.2023, see [art. 1\(b\)](#)

Access to the final results

- 5.—(1) The R&D agreement must provide—
- (a) for all the parties to the agreement to have access to the final results of the joint research and development or paid-for research and development to which the agreement relates for the purposes of—
 - (i) further research and development, and
 - (ii) exploitation of the results, and
 - (b) for the access referred to in sub-paragraph (a) to be granted as soon as reasonably practicable after the final results of the research and development become available.
- (2) For the purposes of paragraph (1), access to the final results of the research and development must—
- (a) include access to any intellectual property rights and know-how resulting from the research and development to which the R&D agreement relates, and
 - (b) not be subject to limitations other than as referred to in paragraph (3).
- (3) An R&D agreement does not breach the condition in this article by—
- (a) requiring a party to the agreement to compensate another party to the agreement for obtaining access to the results for the purposes of further research and development or for the purposes of exploitation of the results, provided the compensation required is not so high as to effectively prevent such access;
 - (b) including provision under which one or more research institutes, academic bodies or undertakings that supply research and development as a commercial service without normally being active in the exploitation of results of research and development, agree to confine their use of the results for the purposes of further research;
 - (c) in cases where the parties to the agreement limit their rights of exploitation of the results in accordance with this Order and, in particular, where the agreement provides for

specialisation relating to exploitation, limiting access to the results for the purposes of that exploitation accordingly.

(4) In paragraph (3)(b), “the exploitation of results of research and development” means the production or distribution of products or the application of technologies arising out of research and development or the assignment or licensing of intellectual property rights or the communication of know-how required for such production or application.

Commencement Information

I2 Art. 5 in force at 1.1.2023, see [art. 1\(b\)](#)

Access to pre-existing know-how

6.—(1) If the R&D agreement does not provide for joint exploitation of the results it must provide that each party to the agreement is to be granted access to any pre-existing know-how of the other parties if this know-how is indispensable for the purposes of its exploitation of the results.

(2) An R&D agreement does not breach the condition in paragraph(1) by requiring a party to the agreement to compensate another party to the agreement for obtaining access to its pre-existing know-how, provided the compensation required is not so high as to effectively prevent such access.

Commencement Information

I3 Art. 6 in force at 1.1.2023, see [art. 1\(b\)](#)

Joint exploitation

7.—(1) If the R&D agreement provides for joint exploitation of the results it must meet the conditions in paragraphs(2) and (3).

(2) The condition in this paragraph is that the joint exploitation must relate only to results which are—

- (a) indispensable for the production of the contract product or the application of the contract technology concerned, and
- (b) protected by intellectual property rights or constitute know-how.

(3) The condition in this paragraph is that, if one or more of the parties to the R&D agreement are charged with the production of a contract product by way of specialisation relating to exploitation, those parties must be required to fulfil orders for supplies of the contract product from the other parties to the agreement, except where—

- (a) the R&D agreement also provides for distribution of the contract product by a joint team, organisation or undertaking or by a third party jointly entrusted with distribution of the contract product by the parties, or
- (b) the parties to the agreement have agreed that only the party producing the contract product may distribute it.

Commencement Information

I4 Art. 7 in force at 1.1.2023, see [art. 1\(b\)](#)

Thresholds, market shares and duration of exemption

8.—(1) Where, in the case of an R&D agreement falling within article 3(2)(a) or (b), at the time the agreement is entered into, two or more of the parties to the agreement are—

- (a) actual competitors or potential competitors, and
- (b) if the R&D agreement relates to more than one contract product or contract technology, actual competitors or potential competitors in relation to the same contract product or contract technology,

the agreement must meet the condition in paragraph (2).

(2) The condition in this paragraph is that at the time the R&D agreement is entered into—

- (a) in the case of an R&D agreement involving joint research and development, the combined market share of the undertakings which are parties to the agreement must not exceed 25% of any relevant product market or relevant technology market, and
- (b) in case of an R&D agreement involving paid-for research and development (“the paid-for R&D agreement”), the combined market share of—
 - (i) each financing party in respect of the paid-for R&D agreement,
 - (ii) the other undertakings which are parties to the paid-for R&D agreement, and
 - (iii) each other undertaking with which each financing party has entered into an R&D agreement in relation to a contract product or contract technology which is the same as a contract product or contract technology to which the paid-for R&D agreement relates,

must not exceed 25% of any relevant product market or relevant technology market.

(3) Where, in the case of an R&D agreement falling within article 3(2)(a) or (b), two or more of the parties to the agreement are undertakings competing in innovation at the time the agreement is entered into and—

- (a) if more than one new product or technology would be covered by the R&D agreement, the R&D efforts which each of those parties independently engage in or, in the absence of the agreement, would be able and likely independently to engage in, concern research and development of a new product or technology which relates to the same new product or technology covered by the R&D agreement, or
- (b) if more than one aim or objective would be covered by the R&D agreement, the R&D efforts which each of those parties independently engage in or, in the absence of the agreement, would be able and likely independently to engage in, concern an R&D cluster pursuing an aim or objective which relates to the same aim or objective covered by the R&D agreement,

the agreement must meet the condition in paragraph (5).

(4) For the purposes of paragraph (3)—

- (a) research and development of a new product or technology relates to a new product or technology that would be covered by the R&D agreement, if it is research and development of a new product or technology which is the same as, or is likely to be substitutable for, the new product or technology that would be covered by the R&D agreement, and
- (b) an R&D cluster pursues an aim or objective which relates to an aim or objective that would be covered by the R&D agreement, if the R&D cluster pursues an aim or objective which is the same, or substantially the same, as the aim or objective that would be covered by the R&D agreement.

(5) The condition in this paragraph is that at the time the R&D agreement is entered into there must be three or more of the following—

- (a) competing R&D efforts comparable with those of the parties to the R&D agreement, or
 - (b) third parties that are able independently to engage in a research and development effort which concerns—
 - (i) research and development of a new product or technology which is the same as, or likely to be substitutable for, a new product or technology that would be covered by the R&D agreement, or
 - (ii) an R&D cluster pursuing an aim or objective which is the same, or substantially the same, as an aim or objective that would be covered by the R&D agreement.
- (6) Where, in the case of an R&D agreement falling within article 3(2)(a) or (b), the parties to the agreement are not competing undertakings at the time the agreement is entered into or the agreement meets all the conditions in paragraphs(2) and (5) to which it is subject—
- (a) the block exemption has effect in relation to the R&D agreement concerned for the duration of the research and development to which the agreement relates, and
 - (b) if the R&D agreement concerned provides for joint exploitation of the results, the block exemption is extended for a further period ending seven years after the time a contract product or contract technology is first put on the market within the United Kingdom, or if more than one contract product or contract technology is put on the market within the United Kingdom, after the time the first of them is put on the market.
- (7) In the case of an R&D agreement falling within article 3(2)(c) or (d), the block exemption has effect in relation to the agreement for the period beginning with the date the agreement is entered into and ending seven years after the time a contract product or contract technology is first put on the market within the United Kingdom, or if more than one contract product or contract technology is put on the market within the United Kingdom, after the time the first of them is put on the market, on condition that—
- (a) at the time the prior agreement falling within article 3(2)(a) or (b) was entered into the parties to the prior agreement were not competing undertakings, or
 - (b) the prior agreement met all the conditions in paragraphs (2) and (5) to which it was subject.
- (8) The block exemption continues to have effect in relation to an R&D agreement after the end of the seven year period under paragraph(6)(b) or (7)(as the case may be), subject to the condition that the combined market share of the undertakings which are parties to the R&D agreement must not exceed 25% of any market to which a contract product or contract technology belongs.
- (9) For the purposes of this article,the parties to an R&D agreement are not competing undertakings at the time the agreement is entered into, if neither paragraph (1) nor paragraph (3) applies to the agreement.
- (10) In this article—
- “actual competitor”, in relation to a contract product or contract technology, means an undertaking that is supplying an existing product, technology or process capable of being improved, substituted or replaced by the contract product or contract technology on the relevant geographic market;
- “competing R&D effort”, in relation to an R&D agreement, means a research and development effort in which a third party engages, alone or in cooperation with other third parties, and which concerns—
- (a) research and development of a new product or technology which is the same as, or likely to be substitutable for, a new product or technology that would be covered by the R&D agreement, or
 - (b) an R&D cluster pursuing an aim or objective which is the same, or substantially the same, as an aim or objectivethat would be covered by the R&D agreement,

and does not include any research and development effort in which any of the parties to the R&D agreement is also engaged (including as a financing party);

“potential competitor”, in relation to a contract product or contract technology, means an undertaking that, in the absence of the R&D agreement relating to the contract product or contract technology, on realistic grounds and not just as a mere theoretical possibility, would be likely, within not more than three years, to undertake the necessary additional investments or incur the necessary costs to supply a product, technology or process capable of being improved, substituted or replaced by the contract product or contract technology on the relevant geographic market;

“relevant product market”, in relation to an R&D agreement, means the market for products—

- (a) capable of being improved, substituted or replaced by a contract product, and
- (b) in relation to which—
 - (i) two or more of the undertakings which are parties to the agreement, or
 - (ii) in the case of an R&D agreement involving paid-for research and development, two or more of the undertakings referred to in paragraph (2)(b),are actual competitors or potential competitors;

“relevant technology market”, in relation to an R&D agreement, means the market for technologies or processes—

- (a) capable of being improved, substituted or replaced by a contract technology, and
- (b) in relation to which—
 - (i) two or more of the undertakings which are parties to the agreement, or
 - (ii) in the case of an R&D agreement involving paid-for research and development, two or more of the undertakings referred to in paragraph(2)(b),are actual competitors or potential competitors;

“undertaking competing in innovation”, in relation to an R&D agreement, means an undertaking which independently engages in, or, in the absence of the agreement, would be able and likely independently to engage in research and development efforts which concern—

- (a) research and development of a new product or technology which is the same as, or likely to be substitutable for, a new product or technology that would be covered by the R&D agreement, or
- (b) an R&D cluster pursuing an aim or objective which is the same, or substantially the same, as an aim or objective that would be covered by the R&D agreement.

Commencement Information

I5 Art. 8 in force at 1.1.2023, see [art. 1\(b\)](#)

Rules for applying thresholds

9.—(1) For the purposes of applying the market share thresholds provided for in article 8, the following rules apply—

- (a) the market share of an undertaking is to be calculated on the basis of market sales value data, or, where market sales value data are not available, estimates based on other reliable market information, such as market sales volumes or expenditure on research and development;

- (b) the market share of an undertaking is to be calculated on the basis of data or information relating to the calendar year preceding that in which the calculation is being made, or, where that calendar year is not representative of the undertaking's position in the relevant market, calculated as an average of the undertaking's market shares for the three calendar years preceding that in which the calculation is being made.
- (2) The market share held by the undertakings referred to in paragraph (e) of the definition of "connected undertakings" in article 2(1) is to be apportioned equally to each undertaking having the rights or the powers listed in paragraph (a) of that definition.
- (3) For the purposes of applying the threshold provided for in article 8(5)—
- (a) the assessment of the comparability of competing R&D efforts is to be made on the basis of reliable information concerning elements such as—
- (i) the size, stage and timing of the research and development efforts,
 - (ii) the availability of financial and human resources to the third party or parties pursuing the research and development efforts, their intellectual property rights, know-how or other relevant assets, and their previous research and development efforts, and
 - (iii) the ability of the third party or parties to exploit in the United Kingdom, directly or indirectly, any possible results of the research and development efforts, and the likelihood of their doing so, and
- (b) the assessment of whether a third party is able independently to engage in a research and development effort of the kind referred to in article 8(5)(b) is to be made on the basis of reliable information concerning elements such as—
- (i) the availability of financial and human resources to the third party or parties, their intellectual property rights, know-how or other relevant assets, and their previous research and development efforts, and
 - (ii) the ability of the third party or parties to exploit in the United Kingdom, directly or indirectly, any possible results of a research and development effort of that kind.

Commencement Information

I6 Art. 9 in force at 1.1.2023, see [art. 1\(b\)](#)

Hardcore restrictions

- 10.**—(1) The R&D agreement must not, directly or indirectly, in isolation or in combination with other factors under the control of any of the parties to the agreement, have as its object—
- (a) the restriction of the freedom of a party to the agreement to carry out research and development independently or in cooperation with third parties—
 - (i) in a field unconnected with a field to which the R&D agreement relates, or
 - (ii) in a field to which the R&D agreement relates or in a connected field, after the completion of the joint research and development or paid-for research and development;
 - (b) the limitation of output or sales, subject to the exceptions set out in paragraph (2);
 - (c) the fixing of prices when selling a contract product or licensing a contract technology to third parties, subject to the exceptions set out in paragraph (3);
 - (d) the restriction of the geographical area in which, or of the customers to whom, the parties may make passive sales of a contract product or license a contract technology, subject to the exception set out in paragraph (4);

- (e) the imposition of a requirement not to make any, or to limit, active sales of a contract product or contract technology in particular geographical areas or to customers which have not been exclusively allocated to one of the parties by way of specialisation relating to exploitation;
 - (f) the imposition of a requirement that a party to the agreement refuse to meet demand for a contract product from customers in a geographical area allocated to another party to the agreement, or from customers otherwise allocated to one or more of the parties to the agreement by way of specialisation relating to exploitation, if those customers would market the contract product concerned in another geographical area within the United Kingdom;
 - (g) the imposition of a requirement to make it difficult for users or resellers to obtain a contract product from other resellers within the United Kingdom.
- (2) An R&D agreement which provides for joint exploitation of the results does not breach the condition in paragraph(1)(b) by—
- (a) setting production targets, where the joint exploitation of the results includes the joint production of a contract product;
 - (b) setting sales targets, where the joint exploitation of the results—
 - (i) includes the distribution of a contract product or the licensing of a contract technology, and
 - (ii) is carried out by a joint team, organisation or undertaking or is jointly entrusted to a third party;
 - (c) providing for practices constituting specialisation relating to exploitation; or
 - (d) restricting the freedom of a party to the agreement to produce, sell, assign or license a product, technology or process which competes with a contract product or contract technology during the period for which the parties have agreed to carry out joint exploitation of the results.
- (3) An R&D agreement which provides for joint exploitation of the results does not breach the condition in paragraph(1)(c) by fixing prices charged to immediate customers or fixing licence fees charged to immediate licensees where the joint exploitation of the results—
- (a) includes the distribution of a contract product or the licensing of a contract technology, and
 - (b) is carried out by a joint team, organisation or undertaking or is jointly entrusted to a third party.
- (4) An R&D agreement does not breach the condition in paragraph(1)(d) by requiring or providing for the results of the research and development to which it relates to be licensed on an exclusive basis to another party to the agreement.
- (5) In this article—
- “active sales” means—
- (a) actively targeting customers by for instance calls, e-mails, letters, visits or other direct means of communication,
 - (b) targeted advertising and promotion, by means of print or digital media, offline or online, including online media, digital comparison tools or advertising on search engines targeting customers in specific geographical areas or customer groups,
 - (c) advertisement or promotion that is only attractive for the buyer if it (in addition to reaching other customers) reaches a specific group of customers or customers in a specific geographical area (and is considered active selling to that customer group or customers in that geographical area),

- (d) offering on a website language options different to the ones commonly used in the geographical area in which the distributor is established, or
- (e) using a domain name corresponding to a geographical area other than the one in which the distributor is established;

“digital comparison tools” means online intermediary services used by end users to compare prices, quality or other characteristics of, and potentially to switch or purchase, goods or services from a range of businesses;

“passive sales” means—

- (a) sales in response to unsolicited requests from individual customers, including delivery of goods or services to such customers without the sale having been initiated through advertising actively targeting the particular customer group or geographical area,
- (b) general advertising or promotion that reaches customers in other distributors’ geographical areas or customer groups (whether exclusive or not) but which is a reasonable way to reach customers not in those other distributors’ geographical areas or customer groups (whether exclusive or not), for instance to reach customers in a supplier’s own geographical area, in that, for example, it would be attractive for the buyer to incur the costs of the general advertising or promotion concerned even if it would not reach customers in other distributors’ geographical areas or customer groups (whether exclusive or not), or
- (c) participating in a public procurement exercise undertaken in accordance with the Defence and Security Public Contracts Regulations 2011(1), the Public Contracts Regulations 2015(2), the Concession Contracts Regulations 2016(3) or the Utilities Contracts Regulations 2016(4).

Commencement Information

I7 Art. 10 in force at 1.1.2023, see [art. 1\(b\)](#)

Effect of breach of conditions in article 5, 6, 7, 8 or 10

11.—(1) Subject to paragraph (2), breach of any of the conditions imposed by article 5, 6, 7, 8(2), (5), (7) or 10 has the effect of cancelling the block exemption in respect of the R&D agreement concerned.

(2) In the case of a breach of the condition in paragraph (8) of article 8, if the combined market share of the undertakings which are parties to the agreement does not exceed the 25% threshold referred to in that paragraph at the end of the seven year period referred to in that paragraph, but subsequently rises above that level, the breach has the effect of cancelling the block exemption but only with effect from the end of the period of two consecutive calendar years following the year in which the 25% threshold referred to in article 8(8) was first exceeded.

Commencement Information

I8 Art. 11 in force at 1.1.2023, see [art. 1\(b\)](#)

(1) S.I. 2011/1848.
 (2) S.I. 2015/102.
 (3) S.I. 2016/273.
 (4) S.I. 2016/274.

Excluded restrictions

12.—(1) Subject to article 13, the R&D agreement must not contain an excluded restriction.

(2) Subject to paragraphs (3) and (4), an excluded restriction means—

(a) an obligation not to challenge, after completion of the research and development to which the agreement relates, the validity of intellectual property rights which—

(i) are held by a party to the agreement under the law of any part of the United Kingdom, and

(ii) are relevant to the research and development;

(b) an obligation not to challenge, after the expiry of the agreement, the validity of intellectual property rights which—

(i) are held by a party to the agreement under the law of any part of the United Kingdom, and

(ii) protect the results of the research and development to which the agreement relates;

(c) an obligation not to grant licences to third parties to produce a contract product or to apply a contract technology

(3) As regards paragraph (2)(a) and (b), provision permitting termination of the R&D agreement in the event of one of the parties to the agreement challenging the validity of the intellectual property rights referred to in those sub-paragraphs is not an excluded restriction.

(4) As regards paragraph (2)(c), an obligation not to grant licences to third parties to produce a contract product or to apply a contract technology is not an excluded restriction if the agreement provides for exploitation of the results by at least one of the parties to the agreement and such exploitation relates to the contract product or contract technology concerned and takes place in the United Kingdom.

(5) For the purposes of paragraph (4), the exploitation takes place in the United Kingdom if it involves—

(a) distribution of the contract product to customers (including third party distributors) in the United Kingdom,

(b) production of the contract product or the application of the contract technology within the United Kingdom, or

(c) the assignment or licensing of intellectual property rights, or the communication of know-how, required for the production of the contract product or the application of the contract technology, to a third party in the United Kingdom.

Commencement Information

19 Art. 12 in force at 1.1.2023, see [art. 1\(b\)](#)

Effect of breach of condition in article 12

13. Breach of the condition imposed by article 12 has the effect, as regards an R&D agreement which contains an excluded restriction—

(a) which is not severable from the agreement, of cancelling the block exemption in respect of that agreement;

(b) which is severable from the agreement, of cancelling the block exemption in respect of that excluded restriction only.

Commencement Information

I10 Art. 13 in force at 1.1.2023, see [art. 1\(b\)](#)

Obligation to provide information and effect of breach

14.—(1) A person must supply to the CMA⁽⁵⁾ such information in connection with any agreement claiming the benefit of the block exemption to which it is a party as the CMA may by notice in writing request—

- (a) within a period of ten working days⁽⁶⁾ commencing with the relevant day, or
- (b) within such longer period of working days commencing with the relevant day as the CMA may, having regard to the particular circumstances of the case, agree with the person in writing.

(2) Where the CMA considers that a person has, without reasonable excuse, failed to comply with the obligation imposed by paragraph (1), the CMA may, subject first to giving notice in writing of its proposal and considering any representations made to it, by notice in writing cancel the block exemption in respect of any R&D agreement to which the request for information under paragraph (1) relates.

(3) In this article—

“relevant day” means—

- (a) where notice to provide information under paragraph (1) is given under article 16(a), the day on which the person receives the notice in writing,
- (b) where notice to provide information under paragraph (1) is given by publication under article 16(b), the day on which the notice is published, or
- (c) if the day mentioned in sub-paragraph (a) or (b) (as the case may be) is not a working day, the next day that is a working day.

Commencement Information

I11 Art. 14 in force at 1.1.2023, see [art. 1\(b\)](#)

⁽⁵⁾ “The CMA” is defined in section 59(1) of the Act.

⁽⁶⁾ “working day” is defined in section 59(1) of the Act, the definition having been inserted by [S.I. 2004/1261](#).

Changes to legislation:

There are currently no known outstanding effects for the The Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022, Cross Heading: Conditions, obligation and consequences of breach.